



[2020] JMSC Civ. 189

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

**IN THE FAMILY DIVISION**

**CLAIM NO. 2013M03096**

<b>BETWEEN</b>	<b>ANGELLA CHRISTINE SCOTT</b>	<b>APPLICANT</b>
<b>AND</b>	<b>NEIL CALDRINE SCOTT</b>	<b>RESPONDENT</b>

Ms. Marjorie Shaw instructed by Brown and Shaw for Applicant.

Mr. Gordon Steer instructed by Chambers, Bunny and Steer for Respondent.

**Heard: June 22, 2020 and September 25, 2020.**

**Application for maintenance – relevant factors – Extension of maintenance orders – relevant considerations- Custody- sole custody- guiding principles.**

**Hutchinson, T. J**

## **INTRODUCTION**

**[1]** On June 7, 2017, the Applicant Angella Scott filed a Notice of Application for Court

Orders, in which she seeks the following orders:

- 1. That the Respondent/Applicant be granted sole custody, care and control of Safya Scott, Saideh Scott, Samara Scott and Soraya Scott;*
- 2. That the Petitioner/father be granted reasonable access to the said children on alternate weekends and during one-half of all major school holidays;*
- 3. That the Petitioner/father does pay to the Respondent/Applicant, towards maintenance, the monthly*

*sum of Fifty Thousand Dollars (\$50,000.00) for each of the four (4) children of the marriage together with all educational, medical, dental and optical expenses;*

## **BACKGROUND**

- [2] The Parties to this application were married in June 2004. The relationship produced 4 children, all girls. The eldest was born on the 10<sup>th</sup> of March 2002 and the youngest on the 23<sup>rd</sup> of June 2009. In the course of this judgment, the children will be referred to by their birth order. A decree absolute was granted to the parties on the 11<sup>th</sup> of September 2014. At the time of the grant of the decree absolute, the Respondent had been paying the sum of \$40,000 monthly towards the maintenance of all four girls. This sum was increased to \$50,000 per month by way of an interim order made by Fraser J on the 29<sup>th</sup> of June 2017. An order was also made for a Social Enquiry Report to assist the Court with the issue of Custody. The Report was submitted on or about the 29<sup>th</sup> of August 2018 and its contents form a part of the record of documents considered by the Court.
- [3] On the 9<sup>th</sup> of March 2020 an interim order was granted ex parte by Fraser J extending the maintenance of the eldest child, until the 22<sup>nd</sup> of June 2020. This order was further extended pending the outcome of this hearing.

## **ANALYSIS AND DISCUSSION**

### Maintenance

- [4] The Applicant seeks a maintenance order for the sum of Fifty Thousand Dollars (\$50,000.00) monthly for each of the four (4) children of the marriage together with all educational, medical, dental and optical expenses to be paid by the Respondent. She also seeks to have the maintenance order made in respect of the eldest child Safiyah Scott extended until she attains the age of 23 years or completes her tertiary education, whichever is first in time.

**[5]** Section 9 of the Maintenance Act provides the foundation on which such an application can be made and it states as follows;

**9.-(1)** *A maintenance order for the support of a child*

*(a) shall apportion the obligation according to the capacities of the parents to provide support; and*

*(b) may make an award for the payment of a sum of money for expenses in respect of the child's prenatal care and birth.*

**(2)** *In considering the circumstances of a dependant who is a child, the Court shall have regard to the following matters in addition to the circumstances specified in section 14(4)-*

*(a) that each parent has an obligation to provide support for the child;*

*(b) the child's aptitude for, and reasonable prospects of, obtaining an education; and*

*(c) the child's need for a stable environment.*

**(3)** *The Court shall have regard to the matters set out in subsection (4) in considering whether any and what order should be made under this section for requiring any party to make any payment towards-*

*(a) the payment of expenses in respect of the prenatal care and birth; or*

*(b) the maintenance or education, of a child who has been accepted by that party as a child of the family.*

**(4)** *The matters referred to in subsection (3) are-*

*(a) the extent (if any) to which that party had, on or after such acceptance of the child, assumed responsibility for the child's maintenance; and*

*b) the liability of any person, other than the persons who cohabited, to maintain the child.*

**[6]** Section 16 of the Act outlines the age to which the child would be entitled to be maintained as well as the governing circumstances that could see an extension of any such order;

**16.-(1)** *Subject to the provisions of this section and section order. 18, a maintenance order shall remain in force-*

*(a) in the case of a child, until the child attains the age of eighteen years; and*

*(b) in the case of any other person, for such period as may be specified in the order.*

**(3)** *Where the Court is satisfied that-*

*(a) a child in respect of whom a maintenance order has been made is or will be engaged in a course of education or training after attaining the age of eighteen years; and*

*(b) for the purposes of such education or training it is expedient for payments under the order to continue after the child has attained that age, the Court may direct that the order remain in force for such period as may be specified in the order, being a period not extending beyond the date on which the child attains the age of twenty-three years.*

- [7] The Respondent for his part has raised an objection to the monthly sum requested by the Applicant and suggests that \$65,000.00 per month plus one half of medical, dental, education expenses, would be a fair sum to cover the maintenance of the children.
- [8] In outlining the basis for the payment requested from the Respondent, the Applicant stated that she is self-employed as a fashion designer who operates her business from her home. She stated that while her monthly earnings would be in the range of \$150,000 she spends at least \$423,133.32 each month providing for their four daughters outside of the \$40,000 paid by the Respondent and often has to depend on loans or monetary gifts from family or friends to meet these expenses. She outlined that the Respondent is a Mechanical Engineer with Petrojam who was earning in excess of \$300,000 monthly at the time of her affidavit in June 2017 and has the capacity to earn considerably more.
- [9] In his account, the Respondent stated that he makes approximately \$240,935.13 per month with his motor vehicle upkeep included and his current monthly expenses amount to \$198,050.00. It was highlighted that his available capital after his expenses are deducted would be \$42,884.18. With the addition of the current monthly maintenance payment of \$50,000.00, it was submitted that his total monthly expenses would amount to \$248,050. With the school expense of \$28,339.35 added to this figure, Counsel observed that the total is already beyond his earnings. He argued that if the Court were to add a total of \$150,000 more to that sum the monthly maintenance would be far more than what the Respondent could afford to pay and he could find himself in a position where he could be punished by the Court and even committed to prison for such a failure.

[10] Counsel for the Respondent referred the Court to the decision of **Cordella Edwards v Derrick Edwards** [2016] JMSC Civ. 190 which outlined the relevant considerations that the court ought to bear in mind when reviewing such an application. The facts of this case are that the Claimant filed a Fixed Date Claim Form seeking an order that the Defendant pays the sum of \$35,000.00 per month for the maintenance of a minor child plus half education and half medical expenses. In delivering her decision, Jackson-Haisley J stated at paragraph 57 and 58 of the judgment as follows:

*[57] It is not being contested here that the law mandates a parent to maintain his/her child. Section 8 of the Maintenance Act stipulates that every parent has an obligation to the extent that the parent is capable of doing so, to maintain the parent's unmarried child. In determining the amount of maintenance to be paid there are certain factors that the court must have regard to. Section 9 of the Act provides that a maintenance order for the support of a child: "(a) Shall apportion the obligation according to the capacities of the parents to provide support; and (b) may make an award for the payment of a sum of money for expenses in respect of the child's prenatal care and birth".*

*[58] In considering the circumstances of a dependant who is a child, the court shall have regard to the fact that each parent has an obligation to provide support for the child as well as the child's aptitude for and reasonable prospects of obtaining an education and also the child's need for a stable environment. Additionally, the Court shall also have regard to the circumstances set out in section 14(4) of the Act. These circumstances include the assets and means of both parties, any legal obligation of both to provide support for another person and also any fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account. (emphasis supplied)*

[11] The Defendant in that matter had proposed payment of the sum of \$10,000.00 per month in circumstances where his income was \$205,000 but the court ruled that \$20,000.00 per month should be paid in addition to half of the medical expenses and educational expenses. The sum was ordered for the maintenance of one minor under the age of 18 years old.

[12] In the **Cordella Edwards** decision, the Court highlighted the relevant sections of the Maintenance Act and the factors to be considered when making orders for maintenance. Sections 9 and 14, require the decision-maker to take into account the capacities of the parent to provide support. In simpler terms, the court is expected to make an order that is within the confines of a parent's monthly salary and his/her existing financial responsibilities. This requires the court to look at the evidence produced by the parties to determine their ability to provide the necessities for the children.

[13] The Respondent also relied on the case of **Ivory v Ivory** [1954] 1 All ER. This decision involved a question as to the maintenance of a wife under the National Assistance Act. The dicta of Lord Merriman, P at paragraph 899A to 899B was specifically commended by the Respondent where the learned judge stated as follows:

*"In my opinion...it is fundamentally wrong to fix a figure which is too high for the husband to pay and to order part of that figure to accumulate as arrears, for there is bound to come a moment when the husband will prefer to go to prison rather than pay. The proper thing is, if possible, to fix an amount which he will pay rather than go to prison. In my view therefore, the justices have directed themselves on a wrong principle as to the amount to be awarded in the circumstances. Counsel united in inviting us to deal with the question of amount to avoid the expense of sending the case back to the justices, and we have accepted that burden."*

[14] The reasoning of the Court in the **Ivory** decision was similar to the approach which was also taken in **Cordella Edwards** and it demonstrated that in making an order for maintenance the court should seek to balance the capability of the respondent to pay against the needs of the dependant.

[15] In presenting their respective cases, the Applicant and the Respondent both produced documents attached to their affidavits. Mrs Scott attached a number of receipts and invoices setting out the costs of school fees for the two younger daughters which was \$85,000 each per term at Stella Maris Preparatory. At the

point when this application was heard only the youngest was still a student at the school, the older of the two having matriculated to high school. Also attached were receipts showing the cost for uniform blouses, bookstore purchases, the purchase of clothing abroad and JPS bills for a three-month period between June to August 2017 which showed an average consumption of \$27,026,89.

**[16]** In her affidavit, she outlined the breakdown of the sum of \$463,133.32 which with the deduction of \$50,000 applied is said to amount to \$103,041.66 per month per child. It was submitted that this sum is not unreasonable given that it includes a monthly cost of \$16,666 for clothing and also a sum which is paid towards extra classes for 3 of the children. The monthly breakdown was set out as follows:

Housing/Accommodations	\$36,000.00
Food/Groceries	\$100,000.00
Snacks	\$24,000.00
Market	\$20,000.00
Electricity	\$20,000.00
Water	\$4,500.00
Lunch Money	\$40,000.00
Hairdresser	\$16,000.00
Toiletries	\$10,000.00
Transportation	\$30,000.00
Internet/Cable	\$4,000.00
Household Assistance	\$28,000.00
Clothing (divided by 12)	\$66,666.66

Miscellaneous	\$8,000.00
Entertainment /Gifts	\$6,000.00
Tutors (Safiya)	\$32,000.00
Tutors (Samara)	\$4,800.00
Tutor (Saidah)	\$2,000.00
Extra-curricular	
(Samara & Soraya)	\$4,666.66
(Safiya swimming)	\$6,500.00
<b>TOTAL</b>	<b>\$463,133.32</b>

- [17] In addition to the short fall in monthly maintenance, the Applicant outlined that the Respondent had failed to meet his obligation to pay his half of the back to school expenses for the children for the period 2017-18 and 2018 – 19. The figure for 2017 – 2018 which consisted of school fees, uniform, books and clothing amounted to just over \$340,000 for all four girls and this amount it was submitted would have doubled for the 2018 – 2019 school year.
- [18] In respect of her monthly income, she provided evidence of two bank accounts held by her, one was her business account at BNS in the name Safidah Art of Sophistication trading as Angella Christine Wilkinson and the other was her personal account at NCB. It was the Applicant's evidence that she earned \$150,000 monthly and payments would go through the business account. A review of both accounts revealed that, in respect of the NCB account, there was a challenge to identify which sums were deposits towards maintenance of the children by the Respondent and which were gifts or loans being provided to the Applicant by other individuals to assist with the children's expenses. The funds in this account also seemed to have been used to meet household as well as



business related expenses. In respect of the BNS account, while there were deposits or transfers made to this account by named individuals, it was not strictly clear if these were payments for services rendered to customers by the Applicant. It was also challenging to determine the monthly income and expenditure for this account as the funds appeared to be used interchangeably for both business and household related purposes and no dates appeared on any of the pages of the print out.

**[19]** In his affidavit, the Respondent outlined that he had taken the decision in September 2015 to move his two younger daughters to St. Richards Primary as he had become overwhelmed with the fees and could no longer afford to keep them at this institution. In his order made on the 29<sup>th</sup> of June 2017, Fraser J had stated that the Respondent should pay half of the school fee that would have been payable at St Richards until further orders. In the course of the trial it emerged that only one child still attends that school. In respect of his current ability to meet those fees, while the Respondent was not cross examined about this he did indicate that his employer, Petrojam, is prepared to pay up to \$85,000 of the school fees of their employee's children if their average is in the range of 70 % and above. He also stated that they provide assistance with the cost of school books.

**[20]** The Respondent set out his monthly expenses in his affidavit and these figures along with the adjusted figures provided in his cross examination, shown in parentheses, are as follows;

Rent	\$36,000.00 (\$60,000.00)
Rent (mother)	(\$20,000.00)
Electricity	\$5,000.00 (\$3,000 - \$4,000)
Water / Sewer	\$1,500.00

	(\$2,000.00)
Phone	\$6,500.00 (\$10,000.00)
Loan (Furniture)	\$15,400 .00 (\$0)
Vehicle Payment	\$52,000.00
	\$(62,000.00)
Fuel	\$20,000.00
Repairs	\$8,000.00 (\$0)
Registration / License	\$1,050.00 (\$12,600 annually)
Groceries	\$20,000.00
	(\$16,000.00)
Salon Barber	\$4,000.00
Child Maintenance	\$40,000.00 (\$50,000.00)
<b>TOTAL</b>	<b>\$229,902.03 (\$248,000.00)</b>

**[21]** The Affidavit of Carlene Evans, the Chief Financial Officer for Petrojam Limited and exhibits CFO 1A- CFO KK which was attached to same were accepted as part of the defence case. The documents included pay advices, which disclosed the remuneration, allowances and other benefits paid to the Respondent for the years 2015-2018. A review of these documents reveal that while the respondents' gross salary between September to November of 2015 was \$276,372.80, his December salary was \$495,727 which included the payment of his savings of \$133,495.74.

**[22]** In 2016, his gross salary for January to April was \$285,912.72 but his salary for May was \$568,805.20, which included \$245,416 for retroactive pay. His salary for June saw a slight increase as it was \$313,572.56 and his July salary was \$1,405,729.06, which included incentive pay of \$1,092,156.50. The months of September, November and December also saw him earning between \$476,333

and \$575,467, which included payments for retroactive duty allowance, retroactive comfort allowance and his savings of \$154,330.30.

**[23]** In 2017, a similar pattern was observed with the salary for January being \$424,754, which included almost \$200,000 in retroactive pay and retroactive duty allowance. In August of the same year, his salary was \$1,212,115.26, which included \$781,951 in incentive pay. December's salary was \$551,481.44, which included \$169,888.70 in savings. In 2018, his gross earnings for January to July was \$381,592.74 but in August he was paid \$1,797,487.74 which included \$542,242 for retroactive pay, \$75,000 as a one off payment for transport allowance and \$727,815 as additional duty allowance. September's salary was \$653,569, which included \$130,680 additional duty allowance, \$7500 retroactive discomfort allowance and \$66,625 as retroactive merit allowance. His basic salary was \$387,304 and his usual allowances amounted to \$61,135. In addition to his basic pay he consistently received ER Savings, Discomfort allowance and Duty allowance.

**[24]** Apart from the retroactive payments which the Respondent received annually in this period, it was also observed that 3 deductions on his pay slip appeared to be paid towards savings, for example in January 2018, the sum of \$15,540 was deducted and paid over towards credit union, the sum of \$13,081.84 towards ER Savings and \$32,704.60 was deducted to be paid to Savings. In the month of August 2018 when he received retroactive payments, \$15,540 went towards Credit Union, \$36,661.84 towards ER Savings and \$91,654.60 towards Savings. September followed a similar pattern as the same figure was allocated to the Credit Union but \$18,170.16 went to ER Savings and \$45,425.40 towards Savings. A review of his payslips between 2015 and 2018 confirmed that these deductions were consistent.

**[25]** In addition to his salary, the Respondent was also paid a transport allowance. In 2015, the amount paid was \$37,975, it was increased to \$52,215.63 and eventually to \$58,953.13 in 2018. It was submitted on his behalf that the sum of \$58,953.13

is used to pay for the upkeep of his motor vehicle and ought not to be considered as part of his salary by the Court.

- [26] In **McEwan v McEwan** [1972] 2 All ER 708, the Court of Appeal held that when assessing whether the sum to be paid for maintenance is “reasonable in all the circumstances of the case”, the Court should take into consideration, not only the party’s actual earnings, but also his potential earning capacity. The potential earning capacity of the Respondent in this instant appears to increase at least three times per year for the period 2015 – 2018 through the payment of retroactive allowances and lump sum savings. Additionally, his pay slips reveal that throughout the course of his employment he has seen a steady increase in his basic pay which moved from \$251,320 in September 2015 to \$387,304 in September 2018. His monthly allowances also saw an adjustment upwards. His payslips also show that he saves a minimum of \$61,325 monthly with this amount being considerably higher at times.
- [27] It was noted that in respect of the expenses pleaded by the Respondent he no longer paid a furniture loan and he also agreed that the sum of \$8000 for vehicle repairs and \$1050 per month for registration were no longer paid as he paid an annual sum of \$12,600 for registration and serviced his vehicle every three months. He testified that he paid a sum of \$62,000 monthly as car payments, having recently changed his vehicle because of an accident but he produced no evidence in support of this expense.
- [28] When measured against the declared earning capacity of the Applicant, which the Court is prepared to accept in the absence of evidence to the contrary, it is apparent that the Respondent would actually be in a position to afford more than the current payment of \$50,000 per month as maintenance. Additionally, from the evidence presented by him he would be able to access financial assistance from his employers to meet a substantial part of the school fees for all his daughters as well as to better assist with the purchase of their school books as their

averages outlined in the Social Enquiry Report would qualify them for this assistance.

- [29]** While the Court takes into consideration the fact that the parent who has care and control of the children may have to meet a variety of miscellaneous expenses, the requirement still remains for the Court to be provided with some evidence of the actual cost of maintaining the children in question. Although, it has been submitted that the expenses declared are reasonable and can be accepted by the Court, the grocery bills presented do not reflect that a total of \$144,000 is spent providing food at home for the children. When the sum of \$40,000 for lunch is added to this, the Applicant needed to provide proof that a total of \$184,000 was being spent to meet these needs but the purchases reflected on her NCB account showed purchases ranging between \$1,143.77 at Lee's Food Fair to a high of \$10,054 at Price Smart. The totals when compiled from her account for the months February to April 2017 did not exceed \$50,000 monthly for supermarket purchases
- [30]** The cost of electricity which was ascribed to the minors also came in for scrutiny as this figure was stated to be \$20,000 monthly. It has already been stated that the average cost of electricity is \$27,000 in circumstances where the Applicant operates a business from her home it is conceivable that it would consume a sizeable quantity of electricity certainly more than \$7,000 worth which the Applicant seems to be asserting it does. The cost for clothing for the girls is also a cause for concern as no factual basis has been put forward for this monthly figure and in any event from the receipts produced this expense appears to be far lower. In respect of the costs stated for extra classes and extra-curricular activities, these in my view would properly be grouped under the category of school related expenses.
- [31]** On a thorough examination of the breakdown provided, I am of the view that the expenses outlined by the Applicant are not entirely supported by the evidence presented and using the expenses of the Respondent for comparative purposes along with the documentary proof presented by the Applicant herself, I am of the view that the monthly expenses for maintenance of all for girls to include lunch

money would be \$230,000 per month. This figure does not include a sum for rent, which I did not accept would be paid, but includes a modest allocation towards miscellaneous, entertainment or gifts, The Respondent's half share of same would see him paying \$115,000 per month. This sum would be in addition to his half share of school related expenses these would include school fees for all the girls, uniforms, books extra classes and extra-curricular activities where warranted and upon presentation of documentary proof by the Applicant. The Respondent is also to bear half of the cost for dental, optical and medical expenses again upon presentation of proof of same being provided to him.

[32] In respect of the back to school expenses, I did not find the Respondent's assertion that he had in fact made payments for two of the daughters to be credible and it is my ruling that he is to pay half of these expenses on proof of the actual sums expended being provided to his attorney by Counsel for the Applicant. In respect of the academic year 2017-2018, copies of the documents presented show school fees, the costs of books and uniforms as amounting to \$239,997.45. There was also expenditure outlined of purchases of other items of school supplies in the United States which at just about US \$789 was JA\$100,282. This brought the figure to \$340,279, the Respondent's half share would amount to \$170,140.

#### Extension of maintenance order

[33] In relation to the eldest daughter, an additional application was filed to extend the maintenance order for her until she attained the age of 23 years. It is settled law that the maintenance order for a minor expires at the age of eighteen years unless an order is made by a Court extending same in circumstances as outlined at Section 16(3) of the Act which was cited earlier. In this situation, the Applicant followed the proper procedure in seeking this extension prior to the eighteenth birthday of the child in keeping with the authorities of *Rowe v Rowe [2014] JMCA Civ 30* and *Daniels v Daniels [2016] JMCA App 29*.

[34] The issue that arises however, is whether the interim order for extension which was made on the 9<sup>th</sup> of March 2018 should be extended until the 'child' completes

tertiary education or attains the age of 23 years, whichever is first in time. The undisputed evidence which has been presented in this regard is that the child was a student in lower sixth form at her high school and is expected to complete her programme in July 2021. It was stated that the intention is to have her proceed to university but nothing was placed before the Court to show that she has such an offer or is enrolled in a tertiary programme currently.

[35] In **Rowe v Rowe**, the Resident Magistrate had extended the maintenance order made in respect of a child who was still in high school on the basis that he ‘may graduate and perhaps further his education’. In analysing this position on appeal Mangatal J (Ag) stated as follows;

*It seems plain that **the** learned Resident Magistrate did not have a proper evidential basis upon which to make the order until the age of 23. With respect, it appears (no doubt with the most benevolent of intentions), that the learned Resident **Magistrate** wandered into the perilous arena of speculation. Section **16(3)** requires that a proper evidential foundation be provided, and based upon the evidence, the order can be made to **extend** up to any age between the age of 18 and **23 years**. The section **does** not mean that when an extension is granted, it must be made up to the age of 23. Twenty three is simply the maximum age up to **which** the order **may** be extended.*

[36] In the absence of any evidence to justify granting the extension beyond the end of the academic year in July 2021, the Court is constrained to limit the range of the extension sought. The position is also the same in respect of the other minors as extensions can only be granted in the absence of evidence where the party from whom the maintenance is sought is prepared to consent to same. In the instant matter, there is no consent. As such, the order extending the maintenance of the daughter born on the 10<sup>th</sup> of March 2002 is extended until September 30<sup>th</sup>, 2021. If the Applicant obtains the requisite documentary proof of her enrolment in a tertiary programme an additional extension can be sought at the relevant time.

### Custody

[37] In addition to her application for maintenance, the Applicant seeks orders granting her sole custody of her daughters. The Respondent objects to the request for sole

custody and has contended that any order made by the Court should be to award joint custody of the children to both parents with custody and care to the Applicant.

[38] A review of the social enquiry report reveals that while there are issues as to favouritism real or perceived being shown by mother and father to the second and third child respectively, all the children have expressed concerns in respect of the parenting styles of the Parties, which include lack of attention or the use of expletives. The report also reveals that the relationship between the father and the second daughter is none existent and neither individual seems to be motivated to address this. What is clear however is that in spite of this situation, father still desires to have joint custody and access to her as well as her siblings.

[39] In support of her request for sole custody, Counsel for the Applicant has referred the Court to the decision of *LMP V MAJ [2017] JMCA Civ 37* which she submitted was authority for the position that a Court ought not to grant joint custody orders where the parties are not able to agree or co-operate in making decisions to advance the welfare of the children. Counsel highlighted that in the instant matter, the Parties agree that they do not speak to each other and that the hostilities between them have resulted in them being involved in a criminal matter at the Half Way Tree Court. It is in these circumstances that she submitted that the Court should divert from the usual practice of awarding joint custody.

[40] In the course of the interview of the children it was noted that while the first and second daughters expressed a desire to reside with their mother, the third daughter chose her father while the fourth child who is the acknowledged baby of the family was unable to choose although she expressed some concerns about her mother shouting at her and using expletives at times. It was noted that this concern was also shared by the third child.

[41] The report confirms that the parents do not communicate with each other and it was conceded by the Applicant that she makes all major decisions for the children without consultation with their father. It was also acknowledged by the Applicant that although father has been granted access she does not always use her



parental authority to enforce the Court's order if the children do not want to go. This gives credence to the concern expressed in the report that that such an approach may preclude father from playing a role in his daughters' lives and help to maintain the status quo between him and the second child.

[42] Although the relationship between the parties is strained, it is apparent that there is an attempt at communication through the children although this isn't always observed. The review of the homes of the respective parties by the State Agency reveal that they have sought to make comfortable accommodations for their children and an interview with them showed that they have the best interest of their daughters at heart.

[43] While it was recognised in *LMP V MAJ* that an award of sole custody of a child or children to a Party does not entirely deprive the other of any right to an input in respect of major decisions to be made concerning the child, in the current situation there is a concern that given the approach of this applicant in the face of an existing interim order for joint custody, the input of the Respondent would be wholly disregarded if sole custody were to be awarded. It is also quite conceivable, that the poor relationship between the Respondent and the second child would only worsen in those circumstances.

[44] In light of the foregoing factors, I am not persuaded that an order should be made for the Applicant to be granted sole custody. From the evidence presented it is clear that father plays more than a financial role in the lives of his daughters even assisting them in their educational pursuits. As such, it would be in the best interest of the children for joint custody to be awarded to the Parties. It would then be incumbent on them to make every effort to communicate on issues involving their children and to take decisions jointly in advancing their welfare, even if the intervention of the Family Counselling Services has to be called on to assist them in this regard. In any event, it would be useful for counselling sessions to be had as a family as it is evident from the report that the breakup of the family has also created divisions among the children.

## CONCLUSION

[45] For the reasons which I have outlined above, the following orders are made as outlined below;

- a. The Respondent is to pay to the Applicant the sum of \$28,750 per child each month as his contribution to maintenance. In addition he is to pay one-half of all educational, medical and dental expenses of the children. The educational expenses include all school fees, the costs of books, extra classes and extra-curricular activities as agreed. This order is effective the 30<sup>th</sup> of October 2020 and the monies payable are to be paid over to an account held by the Applicant, the details of which are to be provided by Counsel for the Applicant.
- b. The Respondent is to pay his half share of back to school expenses for the academic year 2017 – 2018 in the amount of \$170, 140 and 2018 – 2019 on presentation of documentary proof of same. The Respondent's share is to be paid within 30 days of the presentation of these expenses to him.
- c. Joint custody is awarded to the Parties with care and control to the Applicant. The Respondent is granted access to the minor children on alternate weekends each month between Fridays 5 pm to Sundays 5pm. He is also granted half of all major holidays.
- d. The extension of the maintenance order for the eldest daughter d.o.b March 10<sup>th</sup>, 2002 is granted to September 30<sup>th</sup>, 2021.
- e. Liberty to apply.
- f. Each party to bear their own cost.

g. Claimant's attorney to prepare, file and serve order herein.

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**Hon. T. Hutchinson, J**