



[2017] JMSC Civ. 128

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2013HCV04793

BETWEEN	MARK WEST	CLAIMANT
AND	EVELYN WALDEN-WEST	DEFENDANT

IN CHAMBERS

Michelle Smith instructed by Lewis Smith Williams & Co for Claimant /Applicant

Catherine Minto instructed by Nunes Scholefield Deleon & Co. for the Defendant/Respondent

Heard: July 10 and 19, 2017 and September 22, 2017

Custody and maintenance of child – Order made March 26, 2016 - Application for order to be varied – Maintenance Act - The Children (Guardianship and Custody) Act, Section 7

LINDO J

[1] The Claimant and defendant were married on July 9, 2011 and they are the parents of child, Lillian Cathryn, born on September 21, 2012. The parties are separated. On March 26, 2015 G. Fraser, J. Ag., as she then was, made the following orders, among others, after an *inter partes* hearing of an application for custody and maintenance of the said child:

“...Evelyn Walden-West and Mark West shall have joint custody of the infant Lillian Cathryn West, born on 21st September, 2012

Evelyn Walden-West shall have care and control of infant Lillian Cathryn West who shall reside with Evelyn Walden-West

Mark West shall have access on such terms as already agreed by the parties

The claimant is ordered to pay the sum of \$75,750 per month to the Defendant as maintenance for Lillian and also to pay half of all reasonable educational and medical costs incurred for the said child Lillian

The said sum of \$75,750 is payable to the Defendant on the 28th day of each month commencing on the 28th of March 2015. The half share of educational and medical expenses are reimbursable on presentation of receipts to the Claimant..”

[2] It is this order that the Claimant seeks to have this court vary. His Notice of Application for Court orders filed on March 10, 2016 is in the following terms:

“1. That Orders 6, 7 and 8 respectively, of the judgment in this claim made by the Honourable Justice Georgiana Fraser (Ag.) on the 26th day of March, 2015 be varied to read as follows:

- i. Mark West shall have access on such terms as already agreed by the parties and shall have residential access to the minor Lillian Cathryn West every alternate Christmas holidays and birthday commencing from the date of this Order unless the parties mutually agree a change in that schedule for the respective Christmas holiday or birthday.*
- ii. The Claimant shall pay the sum of \$30,000.00 to the Defendant for the maintenance of the minor Lillian Cathryn West together with half of all reasonable medical costs incurred for the said minor*
- iii. The said sum of \$30,000.00 is payable to the Defendant on the 28th day of every month. The half share of the educational and medical expenses is reimbursable upon presentation of receipts to the claimant*

2. Costs to the Applicant/Claimant

[3] The grounds on which the application is made are stated as follows:

(a) “This application is made pursuant to Section 7 of the Children (Guardianship and Custody) Act and section 18 of the Maintenance Act.

- (b) *The applicant seeks the court's intervention in settling between the parties the Applicant access to the minor Lillian Cathryn West for Christmas holidays and her birthdays*
- (c) *The Claimant has been unable to satisfy full payment of the maintenance order for the minor, Lillian West , in the sum of \$75,750 monthly because since the order was made the Claimant's domestic and financial circumstances have changed*
- (d) *The Claimant had a minor son born on February 20, 2015. Further, the Applicant's mother who is now 73 years old is ill and unable to completely care for herself financially since April 2015. The Claimant's minor son and his mother are completely dependent on him financially.*
- (e) *Due to the Claimant's financial constraints he is unable to pay the maintenance order of \$75,750 per month in full when it becomes due.*

[4] On December 5, 2016, the Claimant filed an Amended Application seeking, in addition to the orders sought on the application filed on March 10, 2016, the following:

1. *That the maintenance order of \$30,000.00 per month be retroactive and take effect from February 28, 2016*
2. *That the Defendant shall pay the minor Lillian Cathryn West educational expenses until she attains the age of 18 years*
3. *That the Claimant shall continue to make a monthly contribution of USD\$100 to the Heritage Education Fund for minor Lillian Cathryn West until she attains the age of 18 years*
4. *That the Claimant's said monthly contribution of USD\$100 to the Heritage Education Fund for minor Lillian Cathryn West be deemed his reasonable contribution to her education*
5. *Costs to the Applicant/Claimant*

[5] On January 19, 2017 the court made the following order:

"Mark West shall have access on such terms as already agreed by the parties and shall have residential access to the minor Lillian Cathryn West every alternate Christmas holidays and birthday commencing from the date of this order unless the parties mutually agree a change in that schedule for the respective Christmas holidays or birthday"

- [6] On July 10, 2017 the application in relation to the variation of the order in respect of the maintenance of the child, came on for hearing and affidavits filed by the parties out of time were allowed to stand. Four affidavits of the Applicant filed between March and December 2016 stood as his evidence in support of his application, while the three affidavits of the Respondent filed March, June and October 2016 stood as her evidence in objection to the application. Both parties were subject to cross examination
- [7] The Applicant's evidence in support of his application is essentially that he has not been able to pay the sum of \$75,750.00 ordered by the court because he cannot afford it and his domestic and financial circumstances have changed and as such he has accrued arrears since the date of the judgment.
- [8] He states that he earns his salary at Caribbean Airlines in both Jamaican and United states dollars currency and that his gross income is JMD \$1,811,272.84 and USD\$5,850.00 and on average he earns a net basic salary of approximately \$651,550.00 per month. He also states that he owns a fishing boat which he acquired for "...recreational fishing hobby...considered that I could use it from time to time as an alternative source of income...the boat was not going out steadily in the years I operated it for fishing to afford me a profit...Since this year the boat went out to sea a few times...on the last occasion in February 2016 the engine failed at sea...I therefore have not earned any income from the start of the year from operating the boat..."
- [9] He provided a schedule of the annual expenses in respect of the fishing boat for 2015 and an income performance summary for the same year which shows a loss of \$36,225.00. He has also provided a detailed, updated schedule of his monthly living expenses in his affidavit filed on December 5, 2016, showing total monthly expenses of \$691,654.36, inclusive of the sum of \$75,750.00 ordered by the court and the sum of \$15,000.00 in respect of entertainment on visitation/access and clothes and toy for the child Lillian and the sum of

\$7,300.00 in relation to payments towards Sagicor Health Plan to cover half costs in relation to health for Lillian, among other things.

- [10] Exhibit MW 5 exhibited to his affidavit indicates that in addition to the salary stated by the claimant he also earns “a per diem while on rostered duty”.
- [11] His evidence further is that he is making payments by way of a contribution of \$20,000.00 to his mother, who is ill; \$30,000.00 per month to his partner, who is unemployed, in addition to providing for his household, maintaining two motor vehicles, and maintaining a child Darwin, who was born on February 20, 2015. Additionally, he states that “we are expecting another child with a due date of April 2017...the baby as a new member of my family will also become my dependent”
- [12] Under cross examination by Ms Minto, he indicated that he has been a Pilot for about ten years and that he believed he complied with the order “one time” and agreed that he was in breach of the order made in respect of education. He stated that he could not recall the last time he bought school shoes or books or school supplies for his daughter.
- [13] He admitted to making a lot of purchases on ‘Amazon’ and agreed that at the time of the trial before Fraser J, he was earning approximately \$428,804.99 per month and that his new salary is \$651,550.00 and he received his gross salary in United States currency. He also agreed that in terms of figures, his income is greater, and that since the order his income would have increased by \$222,745.01 per month, which is more than his wife’s net monthly income.
- [14] When pressed in relation to retroactive salary payment received since the court order was made, he said he could not tell the exact sum, but admitted that in his bank statement (Exhibit MW3) where there were two payroll deposits in September, it “could have been” and then said “that must be it”. He then explained that he is paid “every 28 days”

- [15]** He disagreed that the expense listed in respect of Baby Darwin as \$44,000.00 would have been completely absorbed by the increase in salary and agreed that at the time of the trial of the matter, he was already claiming for his mother as a dependant. He said he was giving her \$15,000.00 per month and indicated that the additional \$5,000.00, which he states he is now giving her, is not necessarily absorbed by the salary increase. He agreed that the expenses relating to Baby Darwin and his mother are the only two changes in circumstances that he cited and indicated that the addition of his partner is one of the other circumstances referred to in his affidavit . He admitted that Channeika Weller is the mother of Darwin and she resides at the Bernard Lodge premises and does not contribute to any of the household expenses or the expenses of Darwin.
- [16]** Mr West admitted that he owns two motor vehicles and that at the time of the order of Fraser J, he had one vehicle, stating that he acquired the second vehicle just before the first hearing in the matter. When pressed as to the time he acquired the second vehicle, he said “early 2014...not sure”. He then admitted that he is now servicing, licensing, paying for petrol, toll and car wash for the two vehicles, one of which is used by Ms Weller, and that he gives her an allowance of \$30,000.00, and pays a baby sitter and a helper, but that he cannot pay \$10,000.00 per month for the education of his daughter.
- [17]** He also admitted that in December 5, 2016, he filed an amended application asking the court to make an order that his wife should pay all the educational expenses for the child because of financial constraints and two weeks later he went to the Iberostar hotel for vacation.
- [18]** In seeking to clarify his evidence in relation to purchases made on ‘Amazon’, Mr West gave evidence that he has family, friends and associates who ask him to order items which are delivered to a US address, and he would bring the items down and they give him the money. He also indicated that the sum he paid on a loan to the Palisadoes Cooperative Credit Union is a sum which is now available to him.

[19] The Respondent's evidence is.....

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[21]

[22]

[23] She states that she is an Educator, she started working with the Ministry of Education on July 3, 2017 and her new salary is \$2,932,338.00 per annum. She states that since filing her affidavit in October 2016 there has been an addition of \$6,500.00 to her rent making it \$96,500.00 and it came into effect August 1. She also stated that the nursery fee for Lillian has been increased to \$6,000.00 per week and she began making preparations for her to be enrolled in Wolmer's Preparatory School for the September 2017 academic year and the school fee is \$83,000.00 per term. She states that she informed the applicant by email but got no response.

[24] She states that she was not able to pay a monthly amount on her credit card and took out a loan from Sagicor which she used to consolidate the debts and she is now repaying a total of \$25,000.00 per month.

[25] When cross examined by Ms Smith, she admitted that there are divorce proceedings before the court which were filed by her and that prior to the birth of Lillian Mr West "would have" provided several items and after the birth of Lillian he "would have" given her money for her care.

[26] She maintained that he did not contribute to her pre-natal care and he contributed some money after Lillian's birth. She stated that Mr West unilaterally reduced his payments but there was no agreement as to a sum that he would pay.

- [27] She admitted that when the claim was filed August 2013 they would have been separated from November and she could not have known his lifestyle then or what his expenses were. She also admitted to being aware of Darwin
- [28] Mrs West also gave evidence of lump sum payments having been made by Mr West but said she could not recall when they were made and later admitted that sums were transferred to her account but disagreed that the payments under the interim order were accounted for.
- [29] Mrs West admitted that Lillian can remain at Future Leaders another year and indicated that it was not correct to say it is because of what she wants ...She indicated that it would be an additional \$11,000.00 to send her to Wolmer's as FLL would be \$72,000.00 per term.
- [30] When asked if there was discussion with Mr West as to why he stopped paying maintenance for Lillian she agreed that in an email he stated that he had dramatic change in his circumstances. She admitted to having a son, Tajay; admitted that she was aware that Mr West had an education fund for Lillian but said she did not know how much he contributed to it.
- [31] She also admitted to having a thirteen year old male child boarding at her house since September 2016 and that his parents contribute \$45,000.00 per month

The Submissions

- [32] Ms Minto on behalf of the defendant examined the law on variation of court orders noting that the order of Fraser J was made pursuant to section 7 of the Children (Guardianship and Custody) Act. She noted that the power to vary under section 7(5) is intended to preserve the court's inherent *parens patriae* jurisdiction over children which fall within its jurisdiction. Counsel opined that section 7 of the C(G&C) Act must be read together with sections 8,9,14 and 18 of the Maintenance Act and noting that the statutes are silent on the factors for the

court to consider in determining whether to vary an order in relation to maintenance or custody suggested that we have to look to case law that has developed over the years.

[33] She cited the case of **Tibbles v Sig (trading as Asphaltic Roofing Supplies)** [2012]EWCA Civ 518, a case concerning an application to vary an order under the UK equivalent of our CPR 26.1(7) which provides that the power to make an order, includes a power to vary or revoke that order. The principle from Tibbles was adopted by Morrison J in NFv CB [2016]JMSC Civ 22

[34] It was further submitted by Counsel that the court should not entertain any argument about the reasonableness or lack thereof of the sum ordered by Fraser J, as the Judge made a finding of fact in that regard and this cannot be disturbed “save on appeal”. She pointed out that “the only pertinent question for the purposes of the application is whether there has been a material change in the claimant’s means and capacity to pay the \$75,750.00 ordered by Fraser J”.

[35] Counsel critically examined and dissected the evidence of the applicant in relation to changes in his income and pointed out that on his own evidence, his net basic salary moved from \$428,804.99 to \$651,500.00 She also pointed out that in the grounds of his application he cited only two modifications to his monthly expense, an increase of \$5,000.00 in relation to his mother and the addition of baby Darwin to his expense schedule at a direct cost of \$44,000.00.

[36] Counsel suggested that the combined increase in the Claimant’s monthly expenses for Darwin and his mother is wholly absorbed by the increase in his net monthly income which she had calculated as \$222,745.01 and as such she opined that there has been no material or negative change in his circumstances that would warrant a variation in the order.

[37] Ms Minto expressed the view that the real causes of the dramatic change in the Claimant’s “domestic circumstances” is the addition of the claimant’s girlfriend to his schedule of expenses and the significant expenses which flow therefrom

such as her allowance and the fact that he is now maintaining two cars. Counsel indicated that all references to the claimant's girlfriend and her allowance and other expenses related to her "should be excised from the claimant's schedule of expenses and from the Court's assessment of the Claimant's means and ability to pay".

[38] Counsel also pointed out that the allowance paid to Channeika Weller is not a change in the Claimant's circumstances since the order of Fraser J. She noted that the issue of an "allowance" to her was before the Judge for consideration and was rejected because the claimant chose not to mention the existence of his live in girlfriend and her subsequent pregnancy in any of his affidavits which were before the court at the trial. She expressed the view that Mr West was here trying to re-litigate the issue and submitted that the "harshitudes of Rix LJ's reasons in **Tibbles v Sig (trading as Asphaltic Roofing Supplies)** [2012] EWCA Civ 518, ie 'where a party has made conscious choice not to deploy relevant material this will be insuperable barrier to an applicant for variation' ought to be visited on the Claimant"

[39] Counsel added that even if the allowance for Ms Weller is taken into account, the claimant still has the means and capacity to comply with the order of Fraser J and that is evident on the face of the latest expense schedule exhibited by him. (Exhibit MW4). She noted that he contends that he can only pay \$30,000.00 as maintenance, but the sum of \$53,175.00 is to be added to this, as he says he has since paid off this "credit union loan", and the sum of \$35,400.00 for travel per diem is also to be added, making the sum of \$118,575.00 available from which he can pay the maintenance order. Counsel also pointed to discrepancies in his expense schedule and the fact that some expenses in relation to baby Darwin "are no longer necessary, or will not be necessary in the near future..."

[40] Ms Minto also examined the parties' capacity to earn more and concluded that the bank statements submitted by him, shows that "Mr West can earn up to US\$9,946.71 per month depending on the number of flights he does per

month...”, while Mrs West “is a government worker who is bound by the Staff Orders (cannot have two jobs while working with the government)”

- [41] In relation to the education cost on moving Lillian to Wolmer’s Prep...Counsel submitted that Mr West stands to benefit as it is cheaper to move her to that school.
- [42] Ms. Smith, Counsel for the Applicant, in her written submissions, examined Section 18 of the Maintenance Act and noted that the legislators did not see it fit to limit the timeline or the number of times an application can be made to vary a maintenance order, but gave the court full discretion “if the circumstances so warrant it”. She pointed to the CA decision of **Gary Morgan**...where McDonald-Bishop JA in treating with an appeal in relation to an application for variation of a maintenance order in the Family Court, expounded on the meaning of the term “.....”
- [43] Counsel noted that the law an obligation on both parents to maintain their child and indicated that the court must consider the circumstances of both parents when a maintenance order is being made to see the extent to which each is capable of maintaining their child, indicating that it follows that it applies equally where there is an application to vary a maintenance order. She referred to the case of **Paul Everton Campbell v Diahann Rose Campbell**, Claim No 2000E 528, unreported, delivered April 4, 2008, where Brooks J, as he then was, agreed with Harrison J, Ag., as he then was, in the case of **Butler v Butler**, Claim No D1982/B099, unreported, delivered June 28, 1991, where he said “the means of both ...must be considered when deciding to vary the maintenance order”.
(NOTE I do not agree)
- [44] Counsel indicated that since the judgment the claimant has continued to pay maintenance for the child, but not in the full amount ordered by the court. She noted that in cross examination the claimant pointed out that his financial position is not based on the exchange rate of the dollar but based on his circumstances

and submitted that although the claimant's income from his job has increased due to the increase in the USD rate since the judgment his circumstances and monthly expenses show that his financial position has not been strengthened.

[45] Ms Smith examined the claimant's evidence under cross examination in relation to the sums he indicates he is paying to his mother, his household expenses as breadwinner of his household, the time of the acquisition of the second vehicle, and the fact that Baby Darwin was born a month before the judgment and is dependent on the claimant only and submitted that the claimant's domestic circumstances show why his monthly expenses are what they are and that his income is strained by his monthly expenses.

[46] Counsel pointed to the fact that the financial records of the claimant which have been agreed demonstrate that none of the accounts have any substantial savings and that it would appear that the sum that used to be paid to the PCCU would now become available to the claimant but "that sum would be consumed in the claimant's monthly expenses which the evidence shows exceed his income"....I DO NOT AGREE

[47] Counsel urged the court to consider that the claimant's reality has been that he has no disposable income after his monthly expenses from which to have any savings and that he has "several dependents who depend solely on him including the unplanned new baby". This "later reality" she submitted "will carry additional monthly expenses which the sums from the loan will be available to contribute to".

[48] Counsel also expressed the view that while the claimant's inability to pay the full maintenance places him in a position to be committed to prison it cannot be in the best interest of the child for him to be in prison as in that case he will not be able to contribute to her maintenance at all. She submitted that all these circumstances the court must take into consideration in exercising its discretion in reducing the maintenance sum awarded against the claimant.

- [49]** In relation to educational expenses for the child, Counsel submitted that the claimant has tried to maintain paying the USD\$100.00 monthly to the heritage education fund for the child. She submitted that this contribution is a circumstance which the court should consider and that the claimant's evidence is that he is not able to pay maintenance of \$75,750.00, half education costs and pay monthly to the education fund. She therefore submitted that the contribution to the education fund should be considered his contribution to Lillian's education
- [50]** Counsel examined the evidence of the defendant under cross examination in relation to the proposed change of school for the child and concluded that it would amount to an increase in costs, which is significant and that the action of the defendant shows that she has the means to pay for the child's current education at the level of age 4-5, on her own. She submitted further that there is no good reason to remove her from the school when she could remain there another year and save the parties "a year of unnecessary increased costs"
- [51]** In relation to medical expenses, counsel for the Claimant submitted that the defendant has exaggerated her inability to settle medical expenses for Lillian when they arise and alleged breaches by the claimant of half contribution to medical expenses and asked the court not to consider the defendant's allegation of breach of the order relating to medical expenses in determining the application for variation of the order.
- [52]** Counsel then examined the defendant's schedule of expenses in relation to the judgment of the court and submitted that some of the amounts ascribed to these items for the claimant to contribute for the child would now be unfair when considered against the evidence of the defendant and her schedule of expenses...I CANNOT ADDRESS<> HE SHOULD HAVE APPEALED.....
- [53]** Counsel also submitted that "if the court should grant the variation of the maintenance sum the Claimant further seeks an order for the varied maintenance order to be retroactive to February 2016 or at least March 2016...." She indicated

that the court had the power to vary its own order “retroactively(or retrospectively) unless prohibited by legislation under which the order was made from doing so” She cited the UK case of **McDonald v McDonald** [1963] 2 All ER 857, as settling this point and submitted that the same general principles of the power to vary retroactively applies to this court in exercising its discretion to vary a maintenance order under the Maintenance Act 2005 which does not contain any provision prohibiting same.

[54] Section 7 of the Children (Guardianship and Custody) Act provides as follows:

1. *“The court may upon the application of the father or mother of a child, make such order as it thinks fit regarding the custody of such child and the right of access thereto of either parent, having regard to the welfare of the child, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter ,vary, or discharge such order on the application of either parent, or after the death of either parent, of any guardian under this Act; and in every case may make such order respecting costs as it may think just.*
2. *The power of the court under subsection (1).....*
3. *Where the court under subsection (1) makes an order giving the custody of the child to the mother, then, whether or not the mother is then residing with the father the court may further order that the father shall pay to the mother towards the maintenance of the child such weekly or other periodical sum as the court, having regard to the means of the father, may think reasonable.*
4. *.....*
5. *Any order so made may, on the application of the father or mother of the child, be varied or discharged by a subsequent order”*

[55] Section 18 of the Maintenance Act provides as follows:

“At any time after a maintenance order or an order of attachment has been made under this Act, a Court may upon the application of-

(a)any of the parties to the proceedings in which such order was made;

(b) any person having actual care and custody of a child who is a dependant; or

(c) any person to whom any payment was directed in such order to be made,

vary the order in such manner as the Court thinks fit, suspend the order, revive a suspended order or cancel the order if circumstances so warrant”

[56] The court is empowered under section 7(5) of the C(G&C) Act and section 18 of the MA to vary the maintenance order as sought by the Claimant. The power exercisable under the Maintenance Act is so exercisable “if circumstances so warrant”. Both statutes are however silent on the factors to be taken into consideration in determining if an order is to be varied.

[57] This court has found guidance in the case of **Gary Morgan v Natalie Williamson-Morgan**, [2016] JMCA Civ 53, delivered November 21, 2016, in which McDonald-Bishop JA, at paragraph 26 of the judgment, said:

“... ‘if the circumstances so warrant’, strongly suggests that it was within the contemplation of the legislature that there must be some consideration of the circumstances surrounding the application, the reasons for the application and the likely impact of the variation on the relevant parties before the order for variation is granted...”

[58]

[59] There are authorities which show that in considering whether an order should be varied the court should consider whether there has been any material change in the circumstances of the party seeking a variation and this material change would have to be subsequent to the grant of the order being sought to be varied.

[60] Morrison J in **N.F v C.B** [2016]JMSC Civ 22, a decision deliveredin a similar application as the instant case, had this to say at paragraphof his judgment:

“...the court should be vigilant to restrain the inclination of parties to re-litigate issues by successive applications by restricting such applications to vary to cases where there has been a change in the circumstances of either or both parties, since the grant of the order which it is now being sought to alter. All of this however, must yield to the principle that a judge

of concurrent jurisdiction cannot disturb the findings of fact of a judge at trial...”

- [61] Bearing in mind the above, I hasten to note that this court will not take into consideration whether the sum ordered to be paid is reasonable. I will only examine that sum against the background of what changes in the circumstances of the parties have taken place since the order was made for it to be paid, to determine if it should be decreased as is being sought by the Claimant.
- [62] I have taken into consideration all the evidence placed before me bearing in mind that the best interest of the child is paramount. I have paid attention to the figures placed before the court and have critically examined them to determine what is the disposable income of the applicant at this point in time. I have also had cognizance of the additional expenses which he states he now has to bear based on the fact of the increase to his mother, whom he is obliged to maintain....Although his evidence is that they were expecting a child, he has not provided any evidence from which this court can make a determination as to the expenses he is likely to have in that regard and to borrow from the words of Counsel for the Defendant “there is no evidence before the court as to the live and successful birth of an ‘unplanned new baby’...”
- [63] Mr West would have the court believe that based on his income and expenses he can only afford to pay the sum of \$30,000.00 per month as maintenance for his child. He is even asking the court make an order that the sum he is paying towards ...education in respect of the child whichbe his contribution towards the educational expenses of the child at this time.
- [64] What I find worthy of note is that Mr West has not provided any of his payslips to substantiate his income and neither has he satisfactorily proved his expenses as stated in the schedule provided, but, based on his calculations at the end of the month, he would be in a deficit of \$40,725.00.

[65] In examining the figures he has provided, I find that the sum payable to his girlfriend as an allowance cannot take priority over the welfare of his child and neither can the expenses relating to maintaining two motor vehicles. I also note that he has “thrown in” evidence in relation to a boat he owns but has not indicated if it is being repaired, or is likely to be repaired in the future.

[66] He has not shown on a balance of probabilities that the changes which he has given evidence of are so material as to affect his ability to pay maintenance when those changes are examined against the background of his increase in salary as well as this court’s finding that some of the expenses of which he has given evidence are not expenses that he is under any legal obligation to meet. I also bear in mind that on his own evidence, he has indicated that he has paid off the loan to the Palisadoes Cooperative Credit Union which was \$53,175.00 per month, so he should have that sum as disposable income.....

[67]

[68] In view of the expenses which I find are reasonable in relation to the child measured against the disposable income which I find is available to the Claimant, there being no material change since the order was made..... to move this court, the application for variation is refused with costs to the Defendant to be agreed or taxed.