

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A. M-88 of 2001**

**BETWEEN**

**PATRICK THORNHILL**

**PLAINTIFF**

**AND**

**SAVITRI THORNHILL**

**DEFENDANT**

**Before the Honourable Madam Justice J. Jones**

**Appearances:**

**Ms. Kathy Gonzales for the Petitioner**

**Mrs. Gillian Scott for the Respondent**

**JUDGEMENT**

By way of two Notices and a Summons filed on the 21<sup>st</sup> September 2001, 7<sup>th</sup> March and 30<sup>th</sup> June 2003 respectively the Respondent/Wife (hereinafter called “the Wife”) has brought the following applications against the Petitioner/Husband (hereinafter called “the Husband”)

1. Periodical payments for the child of the family LESLIE MARK born on the 17<sup>th</sup> December 1995;
2. A transfer of property order with respect to a parcel of land situate at La Paille Gardens Caroni (hereinafter called “La Paille Gardens”);
3. A lump sum order for her maintenance and
4. An order pursuant to section 24 (2) (a) of the Matrimonial Proceedings and Property Act Ch.45:51 (hereinafter called “the Act” )for a lump sum payment to enable her to meet the liabilities and expenses reasonably incurred by her in maintaining the child of the family.

Although at the hearing all the applications were heard together for the purpose of this judgement I propose to deal with the applications with respect of the child separate to that of the wife.

With respect to the maintenance for the child of the family at the time of hearing there was in place by way of consent an interim order of \$750.00 for his maintenance. The Wife and the child of the family live in the United States of America.

In support of her application for periodic payments for the child of the family the Wife deposed that her weekly expenses were:

Baby Sitter	\$ 50.00
Medication	\$140.00
Food	\$ 30.00
Books (library fees)	\$ 10.00

Her monthly expenses were as follows:

Direct T.V.	\$ 50.00
Energy (gas, heating)	\$300.00
Electricity	\$124.00
Mortgage	\$600.00
Telephone	\$ 73.00

These expenses are all in United States dollars.

She states as well that she spends some \$200.00 every four months on seasonal clothing. These expenses were not challenged by the Husband. In addresses however the Husband submitted that there was no evidence of the expenses of the child and that in those circumstances the Court would have to accept the consent order entered into by the parties in the proceedings. The Court was therefore urged to make the consent order final.

The evidence of the Wife, some of which was elicited in cross-examination, was that she has four other children from an earlier marriage. The Wife and all five children live in a house purchased by her and her two older children in the United States of America. The evidence is that the two older children support themselves. Accordingly from the evidence it can be inferred that the Wife is financially responsible for the support of herself and the three other children. Attorney for the Husband urged the Court to consider that there may have been another person living on the premises whose expenses could have been included in the expenses claimed by the Wife as hers. I cannot accept this submission the Husband has not challenged these expenses and accordingly they have been accepted by the Husband as being the Wife's expenses and there is no evidence of any other person living with the Wife. I am of the opinion that if it were so the Husband would have deposed to same as he did with respect to his allegation of the existence of a tenant on the premises. Further the Court has a duty with respect to a child, which in my opinion far overrides the strict applicability of the law.

Accordingly I am prepared to accept that the expenses as deposed to by the Wife are expenses which represent the cost of maintaining herself and the three children and divide those expenses into four to arrive at a reasonable sum as representing the cost of maintaining the said child of the family. Attorney for the Wife has submitted that the sum of \$200.00 U.S. is a reasonable sum to be awarded for the monthly maintenance of the said child.

The application for the lump sum payment with respect to the child as drafted seeks an order that the Husband pay a lump sum to enable the Wife to meet liabilities and expenses reasonably incurred by her in maintaining the child of the family “in particular the medical expenses”. Attorney for the Wife submitted that the claim was not limited to the medical expenses but rather included the child’s weekly expenses incurred at a time when there was no maintenance order in place.

Attorney for the Husband while accepting liability for a portion of the medical expenses submits that given the wording of the application before the Court, the Court ought only to take into consideration these medical expenses. It is not in dispute that the Wife incurred medical expenses with respect to the child in the sum of \$5912.74 U.S. in 2001 and \$439.95 between October 2001 and December 2002. Section 24 (2) (a) of the Matrimonial Proceedings and Property Chap 45:51 6 (hereinafter called “the Act”) allows a party to bring an application for a lump sum payment to enable that party “to meet any liabilities or expenses reasonably incurred ...in maintaining...any child of the family before making an application for an order under this section” that is under section 24. Applications under section 24 include applications for periodical payments for the child.

Whereas I am of the view that the use of the words “in particular” in the relevant application does not preclude the Court from considering any other evidence of expenses what is to be determined is whether there is sufficient evidence before the Court to allow the Court to make an order with respect to the child’s day to day expenses incurred prior to the making of an application for an order under the section i.e. before the 21<sup>st</sup> September 2001, the date of the application for periodic payments for the child. Whereas I am prepared to use my inherent jurisdiction to ensure that a child is adequately maintained in the future I am not prepared to use same to compensate a party for monies already expended where there is no proper evidence of such expenditure placed before the Court in support of the said application.

In the circumstances I am not prepared to accede to the Wife’s request that the day to day expenses of the child be considered in this application.

In arriving at a reasonable sum to be paid by the Husband to the Wife for the maintenance of the said child and to meet the child's past expenses I am also required to assess both parties' financial status. According to the Husband he is a self employed joiner but works as a subcontractor for Tridium Caribbean Ltd ( hereinafter called "Tridium"). From the evidence it would seem that the Husband's business operates out of a building constructed by the Husband on State lands for which he has a letter of comfort. The Husband also lives on this parcel of land which is situate at La Paille Village Caroni. He alleges in his affidavit that his monthly income is in the vicinity of \$20,000.00 before expenses.

In assessing the Husband's income I have taken into consideration the fact that in February 2003 he obtained a judgement against Tridium for some \$589,289.20 representing work done and goods supplied to the said company for the period 26<sup>th</sup> April 2001 to 29<sup>th</sup> August 2002, some 16 months, which judgement he has not to date sought to enforce. According to the Husband under cross-examination the work received from Tridium represents about 60% of his income the other 40% of his income coming from private jobs. I find as a fact therefore that the Husband's income is greater than he would have the Court believe. With respect to his expenses I also take into consideration the fact that the Husband continues to contribute to the support and certain other expenses of an adult child of another union in circumstances where he has no legal liability to do so.

The Wife was not cross-examined on her income and except that in his affidavit the Husband alleged that she worked an additional job her income has not been challenged. Accordingly the evidence before me is that the Wife works on an average approximately 60 hours a month and earns \$12.67 U.S. an hour before tax.

With respect to the Wife's application for orders for her benefit. On the affidavit evidence there were certain issues of fact to be determined by the Court. They were as follows:

1. The length of the cohabitation between the parties both before and after marriage;
2. The contribution of the Wife to the Husband's business;
3. The contribution of the parties to the acquisition of "La Paille Gardens" and
4. The relative income earning capacity and financial resources of the parties.

The cross examination of the parties was limited to and proceeded only on item 4 above.

No assistance given by way of cross-examination on the other issues and the Court was left in the unenviable position of resolving same on the affidavit evidence only.

With respect to the La Paille Gardens according to the Wife this property was purchased by her out of moneys saved from maintenance paid to her by her former husband. She claims that the names of the children of that union were placed on the initial application form.

The Wife claims that the Husband's name was only placed on the deed at the request of the National Housing Authority since he was the owner of a business. She says that it was agreed and understood between the parties that La Paille Gardens was for herself and her children. According to the Husband the property was purchased with his money and the wife made no contribution either to the down payment or the monthly repayments. He states however that his name and the Wife's four children were put on the application because it was a requirement of the National Housing Authority. To my mind this is a telling admission by the Husband and one which given the failure of the Husband to deny the Wife's claim that there was an understanding between them that the said parcel of land was for her children and herself is of relevance in the determination of the Wife's application in this regard. From the absence of any evidence to the contrary the Court is left to assume that the La Paille Gardens remains a parcel of land with no building on it. The deed for the said property reveals that the parcel of land is held by way of a lease for 99 years in the name of both parties. The lease is dated the 26<sup>th</sup> September 1996 and indicates that a premium of \$21,614.00 was paid to the Lessor prior to the signing of the deed. No indication is however given as to the manner of payment of this premium. This is the extent of the evidence with respect to La Paille Gardens. There has been no valuation of the said land. In the light of the Husband's admissions I am of the view that it is not necessary to make a specific finding of fact with respect to the financial contributions to the acquisition of La Paille Gardens.

In her affidavits in support of her applications the Wife alleges that the parties cohabited prior to the marriage. This fact is baldly denied by the Husband who alleges that the parties only lived together for a totality of three months. Unfortunately in her affidavits, save for the statement that she left for America in 1996, no particulars are given by the wife as to the period of cohabitation whether before or after the marriage. The Court is therefore left to infer same from the Wife's statements as to her contributions to the Husband's business and her claim to knowledge of matters occurring long before the marriage. Matters all denied by the Husband in his affidavits.

Other evidence which may point to the existence of premarital cohabitation is the fact of the birth of the child of the family in December 1995, the Husband's voluntary admission that the names of the Wife's children were put on the application for La Paille Gardens and the fact that the marriage certificate gives the parties' the same address as their residence at the time of marriage. The question is whether the cumulative effect of these facts, if accepted, can assist in identifying the period of cohabitation or is the Court by default left with the Husband's evidence of cohabitation of only three months. In considering same it must be noted that in response to this assertion by the Husband the Wife denies the paragraph and merely states that "it is passing strange" that the Husband would assert that the parties only cohabited for three months.

On a review of the evidence it is with great reluctance that I must come to the conclusion that there is not sufficient evidence before me of any premarital cohabitation by the parties. Even if the Court were to accept the evidence of the Wife in this regard there is no evidence of the length of such cohabitation.

The Court is therefore left with the admission by the Wife that she left for the United States of America in the year 1996 and, despite her claim under cross-examination that she returned from America sometime in 1996 and resided with the Husband at his present home, the Court is forced to come to the conclusion on the evidence before it that this was a short marriage and that the longest period that the parties could have cohabited was from the date of marriage to the end of 1996 a period of a little over three months.

In the circumstances after taking into account the provisions of sections 24 and 27 of the Matrimonial Property and Proceedings Act Ch.45:51 on the facts of the case I make the following orders:

1. The application by the Respondent for a lump sum payment for her maintenance is hereby dismissed;
2. That the parcel of land situate at La Paille Gardens be transferred to the Respondent absolutely. The Petitioner is to execute the relevant transfer documents within 21 days of the date of presentation of same to his Attorneys. In default thereof the Registrar of the Supreme Court is empowered to execute the said transfer documents on behalf of the Petitioner. The cost of the said transfer to be borne by the Respondent;
3. The Petitioner is ordered to pay the sum of \$200.00 United States dollars or its Trinidad and Tobago equivalent to the Respondent for the maintenance of the child LESLIE MARK born on the 17<sup>th</sup> day of December 1995 the said payment to commence from the 31st March 2004 and to continue until the said child attains the age of 18 years or until further order and *(con't on next page)*

4. The Petitioner to pay to the Respondent the sum of \$ 4,235.12 United States dollars or its Trinidad and Tobago equivalent representing two thirds of the monies expended by the Respondent on the child's medical expenses.

Dated this 29<sup>th</sup> day of March, 2004

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Judith A. D. Jones  
Judge