

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. Cv. 3525 of 2002

IN THE MATTER OF THE COHABITIONAL RELATIONSHIPS ACTS, 1998

BETWEEN

VERONIQUE MAJANI

PLAINTIFF

AND

JOSEPH FERNANDES

DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE P. JAMADAR

APPEARANCES

Mr. R. Sowley for the Plaintiff.

Ms. J. Jones & Mrs. S. Daly for the Defendant.

JUDGMENT

1. The Plaintiff seeks an interim order for the payment of a reasonable periodic sum until her substantive applications brought pursuant to the Cohabitional Relationships Act, 1998 (CRA) are finally determined. This application for an interim order is made pursuant to section 16 of the CRA.
2. In my opinion the Plaintiff has satisfied the requirements of section 16 of the CRA and is entitled to an interim order for the payment of a monthly periodic sum of \$3,000.00 to be paid from the 6th November, 2002 and to continue on the 6th day of each successive month until the hearing and determination of the substantive applications herein. There is therefore due as at the date of this judgment the sum of \$27,000.00 payable forthwith by the Defendant to the Plaintiff. The Defendant is also ordered to pay the Plaintiff's costs of this application.

3. In explaining this decision I propose to proceed as follows. First to analyse section 16 of the CRA. Then, to deal with a preliminary point raised by the Defendant, that the Plaintiff is not entitled to a maintenance order and a fortiori is also not entitled to an interim order. Then, to explain why I accept that the Plaintiff is in immediate need of financial assistance. And finally, to explain why I consider the periodic sum of \$3,000.00 per month payable from the 6th November, 2002 reasonable and justifiable.

SECTION 16 CRA

4. Section 16 of the CRA provides as follows:-

Where it appears to the court that a cohabitant, applying for a maintenance order, is in immediate need of financial assistance, the court may make an interim order for the payment of reasonable periodic sums until the application is finally determined.

5. In my opinion this section gives the Court a discretion to make an interim order for the payment of reasonable periodic sums where:-
 - i. a cohabitant is applying for a maintenance order,
 - ii. it appears that the cohabitant is in immediate need of financial assistance, and
 - iii. the application for a maintenance order is not finally determined.
6. In this case it is not disputed that the Plaintiff is applying for a maintenance order. The third relief sought by the Plaintiff is for 'an order for periodical payments.' Section 2 of the CRA interprets 'maintenance order' as defined in s. 4(1)(b) which includes 'an order for the periodical payment to a cohabitant of such sums of money and such term as may be specified.'
7. Thus, though a lot of argument centred around whether or not the Plaintiff could in fact succeed in obtaining a maintenance order, in my opinion, on a section 16 application, that is not a relevant issue to be determined. The essential circumstance that must appear to a Court to exist if an interim order is to be considered is that there

is a cohabitant applying for a maintenance order who appears to be in immediate need of financial assistance. Thereafter, the function of the Court is to determine what is a reasonable periodic sum and the term of payment.

PLAINTIFF'S ENTITLEMENT TO A MAINTENANCE ORDER

8. Counsel for the Defendant submitted that the Plaintiff was not entitled to a maintenance order and therefore could not succeed in this application for an interim order. This submission relied on a construction of sections 14 and 15 of the CRA which was as follows. Section 14 establishes the policy of the CRA with respect to maintenance. That policy is that except as provided by section 15 there is no general right to maintenance as between cohabitants. Thus, if it can be demonstrated that the Plaintiff does not qualify for a maintenance order under section 15 no relief under section 16 can be sought. Though I agree with the first proposition advanced and accept that the second is partially true, I do not agree with the third as I have already explained at paragraph 6 above. In my opinion, section 16 also qualifies section 14 of the CRA and must be interpreted as such.

9. Counsel for the Defendant submitted that section 15 (1) must be construed as creating two circumstances about which if either or both a Court is satisfied a maintenance order may be made. That is, a Court must be satisfied of either or both 15(1)(a) and (c) and/or 15(1)(b) and (c) if a maintenance order is to be made.

10. In my opinion such a construction is not supported by a plain and ordinary reading of section 15(1). In my opinion, the words 'one or more' and the colon after the words "following matters" followed by three paragraphs indented and categorized as (a), (b) and (c), weigh in favour of the interpretation that the intention of Parliament was to create three sets of circumstance [identified as (a), (b) and (c)] of which if 'one or more' is satisfied the Court may make a maintenance order. That is, the Court must be satisfied of 'one or more' of section 15(1) (a)and/or (b) and/or (c).

11. I find additional support for this interpretation, because of the accepted position that sections 14 and 15 in the CRA were drafted, having considered very similar sections of the Property (Relationships) Act, 1984, New South Wales (PRA) – see sections 26 and 27 PRA. [Both sections 14 and 15 CRA and sections 26 and 27 PRA are set out in an appendix to this judgement].

12. Significantly, in section 27(1) of the PRA it is stated that “a court may make an order for maintenance where the court is satisfied as to **either or both** of the following: “(a), (b)” And , in section 27(1) what appears as section 15(1) (c) in the CRA, forms part of 27(1) (b) and has no application to 27(1)(a), which appears as section 15(1)(a) in the CRA.

13. Thus, it appears, in so far as one can look to the PRA for guidance (given that the CRA was patterned after it or at least that Parliament considered the PRA when it determined the proper wording for the provisions of sections 14 and 15 of the CRA), that the Parliament of Trinidad and Tobago by the choice of the words ‘one or more’ in preference to the words ‘either or both’ (as in the PRA) and by creating three categories to section 15(1), identified as (a), (b) and (c), instead of two (as in the PRA), intended to introduce a third circumstance, satisfaction of which could on its own or with the other two circumstances, justify the exercise of the Court’s discretion to make a maintenance order.

14. In my opinion, the only other possible proper interpretation of section 15(1), which I do not think is as plain or compelling as that stated above, is to read section 15(1) as creating two categories, being, 15(1)(a) and/or 15(1)(b) and (c). Such an interpretation is possible because of the full stop at the end of 15(1)(a) and the semi colon followed by the word ‘and’ at the end of section 15(1)(b). However, in my opinion, what augers against such a construction is the choice by Parliament not to have the word ‘having’ in 15(1)(c) follow immediately and in the same paragraph after the word ‘and’, and rather to create an independent subsection 15(1)(c).

15. In my opinion, if there is any merit in the Defendant's contention that a Court must be satisfied that the Plaintiff qualifies for a maintenance order before an application for the making of an interim order can be entertained, then in light of the analysis of section 15(1) above, at this interim stage what a Court must be satisfied of is that the Plaintiff has established sufficient evidence to demonstrate *prima facie* any one or more of the circumstances contemplated in 15(1)(a) and/or (b) and/or (c).

16. I accept on the affidavit evidence, which has not been tested or explored in cross-examination, that the Plaintiff has demonstrated *prima facie* that she is entitled to argue that the evidence can support either or both of the circumstances contemplated by section 15(1)(a) and (c).

17. There is no contention that the Plaintiff has care and control of the three (3) children of the cohabitational relationship. Two of those children are under twelve (12) years. Whether or not the Plaintiff is unable to support herself adequately by reason of having that responsibility is a matter to be determined at the substantive hearing for a maintenance order. *Prima facie* this is an arguable matter.

It is undisputed that since September 2002 the Plaintiff has been unemployed and without any independent personal income or source of income. And that, but for the Plaintiff's employment with the Defendant (during the period 1992 to September, 2002 and for which she only received a salary from March 2001 to September 2002) the Plaintiff has not worked since 1986. Indeed, there is no unequivocal evidence that the Plaintiff is readily employable at this time in Trinidad and Tobago. In fact, the Plaintiff worked before 1986 only when she was resident out of Trinidad and Tobago. Thus, while it is not disputed that the Plaintiff has a degree in Psychology, is trilingual and has held jobs with Dow Chemicals, Renault and Cartier, all of these were in Europe before she gave up the benefits of those career paths and came to Trinidad to cohabit with the Defendant and assume the role of homemaker and of primary caregiver to the children of this relationship. In so doing the Plaintiff became almost entirely financially dependant on the Defendant for about fifteen (15) years

and relied on this to support herself adequately while she took care of the household and the children.

Thus, I am satisfied that the Plaintiff has established *prima facie* that there is an arguable case that, having regard to the circumstances required to be established by section 15(1)(a), a maintenance order may be made.

18. In addition to the above factors, the following matters also lead me to conclude at this stage that the Plaintiff has established *prima facie* that there is an arguable case, that having regard to all the circumstances it may be reasonable to make a maintenance order [section 15(1)(c)]:-

- i. The Plaintiff is aged 49 and save from her employment with the Defendant has not been employed since 1986.
- ii. There is no evidence of the Plaintiff having any independent income or source of income. She is the joint owner of a property in Corsica, purchased for \$600,000.00, the realisable value of which is in dispute; the Defendant alleging that it is worth \$1.5 M TT and the Plaintiff a nil realisable market value. In any event, comparatively speaking, it is of small value when compared to the Defendant's alleged worth. The Defendant's financial resources are estimated by the Plaintiff as being in the vicinity of \$144 M TT. This value is disputed by the Defendant, but he does not give his own estimate of his assets.
- iii. The Defendant is fully responsible for maintaining the three (3) children of the family and the family home at #18 Mary Street, St. Clair, Port of Spain, as agreed in an order entered before this Court on the 28th May, 2003, in H.C.A. #3524 of 2002 after considerable discussions (the children's consent order – which is also appended to this judgment). The Defendant does not depose to being in any financial need and appears to be still enjoying a high standard of living. For example, upon the parties' separation, the Defendant was able to purchase and now occupies premises valued at \$2.4 M TT known as La Riviera, Westmoorings by-

the-sea. The Plaintiff is wholly financially dependent on the Defendant and at present exists off the benefits she enjoys under the children's consent order.

- iv. The parties lived together in a cohabitational relationship for about fifteen (15) years. The relationship began in about 1986-1989 and continued until November to December, 2002.
- v. The parties enjoyed an extremely high standard of living, which in a country such as Trinidad and Tobago may even be described as opulent. The Defendant alleges that he spent about \$30,000.00 per month on the family. And, the Defendant does not dispute the Plaintiff's assertion that her personal expenditure was in the vicinity of \$10,000.00 per month. During the relationship, the Plaintiff also enjoyed the use of the Defendant's credit facilities and was a joint signatory on the parties joint account. Both of these privileges were unilaterally stopped by the Defendant subsequent to the parties separation. In addition, these parties and their children seemed to enjoy annual holidays to England and Corsica and the Plaintiff and the Defendant went to Bordeaux, France in alternate years from 1993. All of these trips, it appears, including the cost of travel, accommodation and living expenses, were financed by the Defendant.
- vi. The Plaintiff alleges that she has contributed to the income, property and financial resources of the parties and the businesses which she alleges are owned by both of them. For example, the Plaintiff alleges that she played an active role in the businesses Fernandes Fine Wines from 1992 and from 1995 in the Trinidad Country Club (the Defendant became the majority owner of the Trinidad Country Club in about 1987). It is agreed that the Plaintiff was paid a salary of \$3,000.00 for the work she did at the Trinidad Country Club from March 2001 to September 2002. The Plaintiff also appears to be claiming an interest in several other businesses of alleged substantial value. This interest the Plaintiff claims is signified by her status as director in them. In all of these companies the Defendant accepts that he holds significant interests.

- vii. The Plaintiff under the children's consent order has custody, care and control of the three children of the family, three boys aged 14, 11 and 9. This household includes several pets, including three dogs, some 36 to 70 birds and 3 to 5 aquariums of fish. The boys in addition to their schoolwork and extra lessons, play football, tennis and are having piano and catechism lessons. The oldest boy, Thomas suffers from a learning disability. The Plaintiff appears to have always been and now remains the primary care giver for the three children of the family with responsibility for the management and care of the household.
- viii. The Plaintiff is also the beneficiary of several provisions made under the children's consent order. For example, she can occupy the family home until the youngest child attains age 18. This home is fully maintained financially by the Defendant, including the cost of housekeeper and gardening services. The home is air-conditioned (at least in part) and has a pool and electric gate. The Plaintiff also enjoys the use of a motor vehicle fully maintained by the Defendant and a charge account for gasoline, oil and other lubricants up to \$400.00 also paid by the Defendant. The telephone bills for the family home including the Plaintiff's cellular phone bill up to a maximum of \$1,650.00 per month are also paid for by the Defendant. And, in addition to the sum of \$2,000.00 per month per child paid by the Defendant to the Plaintiff for each child's maintenance, the Plaintiff is entitled to \$2,200.00 worth of foodstuff from two specified sources for the benefit of the household.

In my opinion, all of the matters aforesaid demonstrate that there are several compelling circumstances that may justify the making of a maintenance order under section 15(1)(c) of the CRA. However, as I have already stated, these are matters to be resolved at the substantive hearing and not at this stage. Then, consideration as to what is just and equitable and as to what will remedy any injustices existing between these parties can be properly explored and determined. That these circumstances

raise a *prima facie* argument is, in my opinion, sufficient at this stage and for the purpose of meeting the preliminary point raised by the Defendant.

19. Therefore, it is my opinion that the Plaintiff is applying for a maintenance order and has advanced sufficient evidence to raise a *prima facie* case that a Court may be satisfied of one or more of the matters at 15(1)(a) and/or (b) and/or (c), whether these are to be construed independently or as 15(1)(a) and/or 15(1)(b) and (c) [or even for that matter as 15(1)(a) and (c) and/or 15(1)(b) and (c)].

IMMEDIATE NEED OF FINANCIAL ASSISTANCE

20. In my opinion, there is sufficient evidence to conclude that on a balance of probabilities, the Plaintiff is in immediate need of financial assistance. The onus is clearly on the Plaintiff to demonstrate this. It is noteworthy that the standard of proof contemplated by section 16 CRA is circumscribed by the words “where it appears to the Court”, and not as in section 15(1) where the standard required is that the Court “is satisfied.” Thus, the standard of proof required by section 16 is, in my opinion, a lower standard than that required by section 15.

21. It is undisputed that the Plaintiff is without any independent income or source of income, being unemployed and having lost her credit card and joint account facilities and her monthly salary. Financially, the Plaintiff is therefore totally dependent on the “income” paid to her for the benefit of the three children and the household.

22. Though the words “in immediate need” must be given their plain and ordinary meaning, that meaning must also be interpreted in the context of each particular case. This element of contextuality is envisaged by the CRA and was intended by Parliament as can be gleaned from sections 10(1) (which state that the Court may make such order as is “just and equitable”), 15(1)(c) and 15(2)(g) and (j) [which state respectively that the standard of living is a consideration and also “any fact or circumstance that ... the justice of the case require to be taken into account.”]

23. It cannot be disputed that these parties and their children enjoyed a very high standard of living for the duration of their cohabitational relationship. That the Plaintiff expended some \$10,000.00 per month on her own personal expenses is not challenged. That the Plaintiff was paid a salary of \$3,000.00 per month until September, 2002 for the work she did at the Trinidad Country Club is agreed. That the Plaintiff has no immediate independent source of personal income is not questioned. How then is this Plaintiff to maintain herself? How is she to continue to enjoy, if not her accustomed standard of living, a reasonable standard of living commensurate with her and her children's expectations pending the determination of her substantive applications? With no income to legitimately spend on herself, it is virtually impossible. It would, in my opinion, be condoning an abuse and misuse of a Court's order for the benefit of minors, to suggest that the Plaintiff can or should use income she receives for the benefit of the children of the family to meet her independent personal needs.

24. In addition, the Defendant has not alleged any incapacity to pay the Plaintiff interim maintenance, or that he would suffer any hardship if ordered to do so. His position is that the Plaintiff is not entitled in law to any maintenance or any interim maintenance. In my opinion, in the circumstances of this case, bearing particularly in mind those matters I have identified, it is self evident that this Plaintiff must be in immediate need of some financial assistance. Indeed, it seems that the Defendant himself recognised this, when in response to a written suggestion on behalf of the Plaintiff that 'proposals for interim maintenance' be explored, the Defendant's advisors responded in November 2002 as follows: "with respect to your allegations of my client depriving yours of any income to enable her to take care of herself and the children, my client advises that your client has and continues to have the use of my client's credit card." That is to say, it was the Plaintiff's entitlement to use the Defendant's credit card that averted the Plaintiff being deprived of income to take care of herself.

Some examples will illustrate the point. Suppose the Plaintiff needed to avail herself of medical attention, where will she get the money to pay for this at this time? Or, suppose the Plaintiff needed to purchase for herself some necessary clothing, foodstuff, medicine or other personal items, where will she get the money to do so at this time?

The provision of “necessaries” in the family law context includes the provision of resources to obtain sufficient shelter, food, clothes, medical care and educational training. In my opinion, once one is considering basic needs, in addition to the above, the provision of adequate resources for recreational activities and for health and fitness is also necessary. Indeed, what constitutes a basic need, though to some extent determined by objective minimum standards, is also to be determined by more subjective factors such as the standard of living enjoyed by the parties and the reasonable and affordable expectations of same. This Plaintiff is clearly without any personal income or any income earning assets at this time. She has little independence. In my opinion, there is little doubt that it appears that this Plaintiff is in immediate need of some financial assistance, despite all of the benefits she enjoys under the children’s consent order.

A REASONABLE PERIODIC SUM

25. What then is a reasonable periodic sum to operate as an interim order pending the determination of the Plaintiff’s application for a maintenance order? The Defendant submits that there is no proper evidence upon which a Court can determine what is a reasonable sum for an interim order. I disagree. The Plaintiff has been accustomed to spending some \$10,000.00 on herself every month. Such a sum no doubt allowed her to indulge to the fullest the standard of living that these parties enjoyed and the Defendant was prepared to maintain. However, under a section 16 application, that is not the purpose of an interim order. The words “immediate need” suggest the satisfaction of “needs” not of “wants”. That is, provision must be made to ensure that basic needs, commensurate with accustomed standards of living, expectations and affordability, are properly provided for.

26. Even though there has been no itemization or identification of what those needs may be and/or the cost to afford them, given the standard of proof applicable to section 16, I am prepared to use as a guide the salary received by the Defendant during her employment at the Trinidad Country Club as a reasonable measure of what this Plaintiff was prepared to accept as sufficient to meet her basic needs. Thus, though the Plaintiff may have spent some \$10,000.00 per month on herself, I do not think she is entitled to that sum as an interim order. Instead, I would award her the sum of \$3,000.00 per month as a monthly periodic sum to be paid by the Defendant to her, pending the determination of her application for a maintenance order. In my opinion, this sum will allow the Plaintiff to comfortably afford the basic needs that I have alluded to at paragraph 24 above and which may not be covered by the children's consent order, and to do so without any financial hardship to the Defendant.
27. In my opinion, this Court has a discretion not only as to the amount to be paid but also as to the time from which that sum should be paid. Section 21(i) of the CRA provides that a Court in exercising its powers under this Act, may, *inter alia*, "make any order ... which it considers necessary and which it is empowered to make or grant under any other law."
28. By section 29 of the Matrimonial Proceedings and Property Act where an order is being made for periodical payments, the term of the order can be made to begin "not earlier than the date of the making of an application for the order in question." Thus, in exercising the power to make an interim order under section 16 of the CRA a Court can, in my opinion, make an order which it would under the Matrimonial Proceedings and Property Act, once it is consistent with the provisions and intent of the CRA. The duration of an order for periodical payments can thus commence from the date on which the application for same was made.
29. In this case, that date is the 6th November, 2002. This interim order is therefore to commence from the 6th November, 2002 and to continue until the determination of the Plaintiff's application for a maintenance order. In my opinion, this meets the

justice of this case because the Plaintiff has been without any independent income since about November 2002, by which time not only had she ceased receiving a salary, but her entitlement to use the Defendant's credit card facility and/or to benefit from the prior joint account had been stopped.

Dated this 31st day of July, 2003.

P. Jamadar
Judge

APPENDIX

A. PROPERTY (RELATIONSHIPS) ACT, 1984, NEW SOUTH WALES.

26. A party to a domestic relationship is not liable to maintain the other party to the relationship, and neither party is entitled to claim maintenance from the other, except as provided in this Division.
27. (1) On an application by a party to a domestic relationship for an order under this Part for maintenance, a court may make an order for maintenance (whether for periodic maintenance or otherwise) where the court is satisfied as to either or both of the following:
- (a) that the applicant is unable to support himself or herself adequately by reason of having the care and control of a child of the parties to the relationship or a child of the respondent, being, in either case, a child who is, on the day on which the application is made:
 - (i) except in the case of a child referred to in subparagraphs (ii) under the age of 12 years, or
 - (ii) in the case of a physically handicapped child or mentally handicapped child under the age of 16 years,
 - (b) that the applicant is unable to support himself or herself adequately because the applicant's earning capacity has been adversely affected by the circumstances of the relationship and, in the opinion of the court:
 - (i) an order for maintenance would increase the applicant's earning capacity by enabling the applicant to undertake a course or programme of training or education, and

- (ii) it is, having regard to all the circumstances of the case, reasonable to make the order.

B. COHABITATIONAL RELATIONSHIPS ACT, 1998, TRINIDAD AND TOBAGO.

- 14. Except as otherwise provided by this Act, one cohabitant is not liable to maintain the other cohabitant and a cohabitant is not entitled to claim maintenance from the other.

- 15.(1) A court may make a maintenance order, where it is satisfied as to one or more of the following matters:
 - (a) that the applicant is unable to support himself adequately by reason of having the care and control of a child of the cohabitational relationship, or a child of the respondent, being in either case, a child who is -
 - (i) under the age of 12 years; or
 - (ii) in the case of a physically disabled or mentally ill child, under the age of 18 years.
 - (b) that the applicant's earning capacity has been adversely affected by the circumstances of the relationship, and in the opinion of the court a maintenance order would increase the applicant's earning capacity by enabling the applicant to undertake a course or programme of training or education; and
 - (c) having regard to all the circumstances of the case, it is reasonable to make the order.