

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. M821 of 2000

BETWEEN

CHRIS RAMHARACKSINGH

PETITIONER

AND

BRIAN RAMHARACKSINGH

RESPONDENTS

BEFORE THE HONOURABLE MR. JUSTICE STOLLMAYER

Appearances:

L. Seebaran-Suite for the Petitioner

B. Lodge-Johnson for Respondent

REASONS

This was the Petitioner's application by amended Notice of 6th October 2000 for maintenance pending suit, and periodical payments for the two children of the family.

The application was supported by Petitioner's affidavits of 9th November 2000 and 27th November 2000, as well as the affidavits of Bainey Balliram, Kalapatie Kalloo, Beena Singh, Abigat Dass and Shakila Rampersad, all filed 27th November 2000. The Respondent filed an affidavit in opposition on 20th November 2000.

In determining the application I adopted what might be called a “broadbrush approach” (See *Rayden & Jackson on Divorce and Family Matters*, 16th Ed. Para. 29.7) in relation to the Petitioner’s application for maintenance pending suit, which the attorneys appearing for the parties agreed was correct. In so far as the application for periodical payments for the maintenance of the children was concerned, the attorneys also agreed with my view that it was not appropriate to make a final order at this time because the evidence before the Court indicated that ultimately the final order for financial relief granted to the Petitioner, if any, might well impact on any award then existing in favour of the children.

The parties were married on 6th May 1989. The Petitioner was 23 years old at the time and is now 35. The Respondent was then 22 years old, and a medical student, and is now 34 and a fully qualified doctor in private practice as a specialist family physician. The Petitioner is now unemployed having worked as a clerk attached to the Board of Inland Revenue from 1982 to 1993. She assisted the Respondent in the running of his practice for sometime but has been unemployed and without income since February of 2000. She now receives \$800.00 per month as maintenance for the two children of the family, Amrita born 18th April 1993 and Amrit born 12th July 1995, having been given the sum of \$6,000.00 by the Respondent when he left the matrimonial home at the end of February 2000. The Respondent has paid to the Petitioner sums totalling \$5,500.00 between April to July 2000, an average of \$1,125.00 per month, and thereafter \$800.00 in each of August, September and October 2000, the Respondent being of the view obviously that this is a sufficient sum to support the Petitioner and their children.

The Respondent is a medical doctor having been certified by the Medical Board of Trinidad and Tobago in 1993. He was for some time employed at a Regional Health Authority at a monthly salary of \$6,631.00 and, while still so employed, he also entered into private practice and says that he earned initially, between \$1,500.00 and \$3,000.00 per month from this when he first went into part-time private practice in 1997. He went into full-time private practice in January 1999. He now describes himself as a specialist family physician

I did not accept his evidence that his income now averages \$200.00 per day. He had previously been in the employment of a Regional Health Authority and had also at that time been in private practice. I found it improbable that he would go into full time private practice unless there was a real probability of at least maintaining his previous income, if not realising a substantial increase in it. On the other hand, I was not able on the evidence before me to determine that his income is in fact \$20,000.00 per month or more as the Petitioner alleges. Returning to the question of his present income, and having regard to my view that it was improbable that he would have left the employment of a Regional Health Authority to accept a reduced income, and also having regard to his pattern of spending, including his ability to pay \$30,000.00 towards obtaining his MBA, as well as having regard to the credit balances in certain accounts, I found it probable that his income is in excess of the \$8,000.00 a month he claims and that in all probability it is considerably in excess of that amount.

The Respondent having said initially that he could only afford \$800.00 a month, he then offered to meet further expenses or to provide certain other items for the benefit of the children, all of which will inevitably have a cost attached to them. In his affidavit the Respondent said that he would continue to pay the \$800.00 per month which he had been paying at the time, together with the billings from WASA and T&TEC, as well as provide transport, school books, uniforms and medical needs. The WASA billing is the equivalent of \$75.00 per month, the T&TEC bills are the equivalent of \$125.00 per month, transport is \$400.00, school books and the uniforms are \$200.00 per month and medical needs (dental/optical and medication) are \$450.00 per month. This produces a total of \$1,250.00 which, when added to the existing payment of \$800.00 per month, indicates that the Respondent is well able to pay at least \$2,050.00 per month, an amount 2½ times that which he thought initially to be reasonable. This also, in my view, affected adversely the credibility of his evidence as to his ability to pay. I did not accept without reservation what he claimed to be his expenses. He claims for example expenditures of \$164.00 on 1st October 2000 and \$140.00 on 28th October 2000 on gasoline for his Mitsubishi Lancer motor car (See Exhibit BR1 to his affidavit). The latter expenditure is the cost of 49.12 litres of unleaded gasoline or 54.14 litres of super (leaded) gasoline at the controlled prices of \$2.85 and \$2.45 per litre respectively. It is well known that the capacity of the fuel tank of this make and model of motor car is 50 litres. A claimed expenditure of \$164.00 only serves to further weaken his credibility and claims.

Similarly, however, I was not prepared to accept without reservation the expenses which the Petitioner put before the Court. There was to my mind an element of flexibility in their estimation.

There are, however, certain expenses which the Petitioner will have of necessity to meet and in respect of which she now has no available funding of her own. There is little doubt that these expenses exceed \$5,000.00 per month but I doubt that they extend to in excess of \$7,300.00 per month. The total expenses claimed are \$7,337.00 per month of which the expenditure on the children is \$2,134.00 a month and those in respect to the household are put forward as \$3,778.00. The children are, of course, a part of the household and certain of the household expenses can be apportioned for their benefit.

The Petitioner's personal expenditure is put at \$1,425.00 per month, including the disputed item of a cosmetology course of \$375.00 per month.

Inevitably, in situations such as this both Respondent and Petitioner may have to make do to some extent for the time being and until such time as a final order is made.

I was satisfied on the evidence before me that, as an interim order, reasonable maintenance in respect of each child should be \$1,250.00 per month and that reasonable maintenance pending suit for the Petitioner should be \$1,500.00 per month. Each of these amounts will cater for the personal upkeep of the individual as well as contributing to the general household expenses. I did not consider that this total amount of \$4000.00

per month was an unreasonable burden to be placed on the Respondent, who would in any event derive a certain reduction in his income tax liability as a consequence of any orders made.

I therefore ordered the Respondent to pay periodical payments to the Petitioner in respect of each of the two children of the family an amount of \$1,250.00 per month to commence on 6th October 2000, that being the date of the Notice, and to continue thereafter on the 6th day of each successive month until further order.

I also ordered the Respondent to pay to the Petitioner maintenance pending suit of \$1,500.00 per month commencing on the 6th October 2000 and continuing thereafter on the 6th day of each successive month until determination of the suit or until further order.

After hearing the attorneys and they having had discussions with their respective clients and agreed to same, I also ordered that the payments to be made by the Respondent with respect to the months of October and November 2000 should be satisfied by the payment \$3,200.00 on or before 15th December 2000 and as to \$4,000.00 on or before 31st December 2000.

I also ordered the Respondent to pay the costs of the application, to be taxed in default of agreement.

Dated this 16th day of February 2001.

C.V.H. Stollmeyer
Judge