

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE  
(Sub-Registry)

H.C.A. S-755 OF 2002

IN THE MATTER OF AN APPLICATION PURSUANT  
TO SECTION 28 OF THE MATRIMONIAL PROCEEDINGS  
AND PROPERTY ACT

BETWEEN

RADICA BEALES

APPLICANT

AND

ANDREW BEALES

RESPONDENT

**Before the Honourable Madame Justice A. Tiwary-Reddy**

Appearances:

Mrs. I. Mootoo-Persad for the Applicant

Mrs. E. Van Lare for the Respondent

***REASONS:***

By Originating Summons filed on 2. 5.02. the Applicant claimed:

- (1) That the Respondent has wilfully neglected to provide reasonable maintenance for her, and that he be ordered to make such payments to her for her maintenance as may be just;
- (2) That the Respondent has wilfully neglected to provide reasonable maintenance for the three minor children of the family;

Stefan R. Hobson born 16.7.86, Kevin J. Hobson born 1.4.88 and Nicollette M. Hobson born 2.9.89;

- (3) That the Respondent pay the costs of this application.`

Several affidavits were filed by both parties. Paul de Verteuil, the Service Manager of the Tucker Group of Companies filed an affidavit on behalf of the Respondent. Eight other affidavits were filed on behalf of the Applicant. These included three by her father Kissoon Lall (Lall) Steven Hamid (Hamid) each by Rhonda Sammy (Rhonda) the Applicant's friend, Dr. Rasheed Rahaman her doctor and Randolph de Silva, the acting Corporate Secretary of Bayside Towers. Both parties were cross-examined at length while de Verteuil and de Silva, the two realtors were also cross-examined.

I found that the Respondent had wilfully neglected to provide reasonable maintenance for the Applicant and the said three children and I made the following orders.

- (1) The Respondent do pay to the Applicant the sum of \$6,500.00 per month on the first day of each and every month with effect from 1.12.03.
- (2) The Respondent do pay to the Applicant the sum of \$1500.00 per month on the first day of each and every month with effect from 1.12.03 for the maintenance and support of each of the following children, namely:

Stefan R. Hobson born 16.7.86;  
Kevin J. Hobson born 1.4.88; and  
Nicolette M. Hobson born 2.9.89

until each child attains 18 or completes secondary education.

- (3) The Respondent do pay the Applicant's costs of this application certified fit for Advocate Attorney-at-Law.

I am required to give reasons for my decision, which I now do.

### **BACKGROUND**

The Applicant, a native of Trinidad and Tobago is now 38 while the Respondent, a British subject is 46. The parties lived together for a short period before their marriage in the UK on 6.7.96. At the time of the marriage the Applicant was the mother of four (4) children from a previous marriage to Krishna Hobson (Hobson). The eldest of the four (4) children Jaime Hobson born 25.9.83 was 18 ½ at the date of this application and not attending school. The three (3) other children are those listed in the Originating Summons. Of the three children, Kevin suffers from asthma.

The Applicant and Hobson were divorced approximately eleven (11) years ago. Hobson is an alcoholic and drug addict and had failed to comply with a Court Order to pay \$300 per month per child for the maintenance of their four (4) children. Up to the hearing of this matter, the Applicant maintained that Hobson was unemployed and living at no fixed address and had paid a total of \$2400 towards the maintenance of these children over a period of ten years. None of this was challenged by the Respondent. Prior to meeting the Respondent, the Applicant's father had assisted her in maintaining the children.

Shortly before the marriage and for about five months after the marriage, the parties and the four (4) children lived at the home of the Applicant's parents in Claxton Bay. Thereafter the parties lived for a brief period in England leaving the children in the care of their maternal grand-parents. On their return, the parties and the four children lived in a home rented by the Respondent's employers, Frank's International Trinidad Ltd. (Frank's), at a monthly rent of

\$9,500.00 until 4.2.02 when the Respondent left the matrimonial home in circumstances which are not agreed.

The Applicant alleged that the Respondent maintained herself and the four children to a very high standard. They enjoyed a lavish lifestyle which the Applicant was able to afford. He was generous with money, paid all the household and educational expenses, bought them expensive gifts and took them all abroad on holidays. However she alleged further that the Respondent drank alcohol excessively and became abusive when drunk. Further, he was unfaithful to her on several occasions and often threatened to leave at the slightest provocation.

The Respondent contended that he left the Applicant when he realized that she did not appreciate or care for him but was only interested in the money he provided for the household. The Applicant alleged that the Respondent left the home taking a mattress with him on the very day that she had been discharged from hospital and was recovering from a second bout of dengue fever. Further that the Respondent had made no arrangements for her support or for that of the children and that he had the means to continue to provide for them.

I reviewed all the affidavits with their exhibits, the cross-examination of the parties and of the realtors and considered the submissions on behalf of both parties. There were several hotly contested issues of fact. I shall deal with the more important ones.

**CHILDREN:**

The four (4) children were aged between 6 and 12 when the parties were married. At the break-up they were aged 12 to 18. Thus the three (3) younger children have passed their formative years with the Respondent being their father figure.

The Applicant exhibited seven Father's Day cards and one Mother's Day card from her four children to the Respondent. In these cards the said children expressed their love for and appreciation of the Respondent as their father. The Applicant also produced several photographs showing the parties and the four children celebrating Christmas together, teaching one of the sons to steer the boat, relaxing at home and on holiday at the seaside. They seemed to be a happy and close-knit family.

Also exhibited were several photographs of the Applicant, the four (4) children and the Respondent's daughter, Stacey and Stacey's friend at the Applicant's parents' home and on holiday at the seaside. I therefore rejected the Respondent's allegation that the Applicant had objected to Stacey's photograph being displayed in their home.

The Respondent permitted the two older children to use the computer at his place of work, took a definite interest in the progress of the school work of all the children and generally held himself out to be their father. The Applicant exhibited some letters written by the Respondent to herself expressing his love and concern for the children as part of their family. When the Applicant and Jaime contracted dengue fever in 2000 the Respondent wrote letters to the Trinidad Express and to Victoria Nursing Home in San Fernando both dated 8.2.00 complaining about the treatment meted out to **“his wife and step-daughter/daughter.”**

The Respondent denied that he had treated the four children as children of the family. However having reviewed the letters, cards and photographs tendered by the Applicant as well as the rest of the evidence, I have no doubt that the Respondent treated all four children as children of the family. For his part the Respondent made no distinction between his financial support for the Applicant and for the children. He was generous with all of them.

### **THE BREAK-UP**

The Respondent's reasons for the break-up were not convincing. In cross-examination he alleged that the Applicant had been stealing his money yet, he left her name on his bank account for about a year after he alleged that she had been stealing. According to him when he left the home for good on 4.2.02 he went to reside at 18, Palmiste Gardens in a fully furnished 2-bedroom apartment (the Palmiste apartment). However he admitted that upon leaving, he took a mattress with him. It is to be noted that on 10.3.02 when there was an incident at his office, a woman was asleep on a mattress in that very office.

The Respondent's attorney made heavy weather of a letter written by the Applicant apologising to the Respondent for having treated him badly. The Applicant explained that she had been devastated by his leaving and had been begging him to return and to be reconciled. It was in that context that she had written. "I deeply regret any and everything I have done to you". I accepted the Applicant's explanation.

### **WIFE'S INCOME/EARNING CAPACITY**

The Applicant had been a patient of Dr. Rasheed Rahaman for the past 25 years. The doctor deposed that the Applicant suffers from rheumatic heart disease with stenosis, which is a progressive disease and that at present her activities are limited to normal household duties.

While the parties were in England the Applicant worked for two hours a day stacking shelves in a convenience store. Prior to the marriage she also worked as a laboratory technician and as a waitress. Since 1997 the Applicant had never worked outside the home. Prior to the marriage the Respondent was well aware of the state of the Applicant's health. The Applicant testified that she was unable to do any stressful work while the Respondent contended that it was her lack of academic qualifications and not her medical condition which

affected her ability to find employment. No evidence was adduced that the Applicant ever sought employment in Trinidad during the marriage.

While the Applicant did not have salaried employment, she maintained that, through-out the marriage, without paid household help, she had kept house for the Respondent and the four children; that initially, she had assisted the Respondent in setting up and running the Trinidad office of Frank's and that she had also entertained several of Frank's senior employees and their spouses in the home. The Applicant produced photographs of some of these visitors in the home as well as cards and letters of appreciation from them. I believed the Applicant.

#### **INCOME/EARNING CAPACITY OF THE RESPONDENT**

The Respondent was an oil well engineer employed with Frank's since 1997. Up to the time of the break-up the Applicant alleged that he had been employed as the Country Manager at a salary of US\$7,838 per month with an annual bonus of US\$10,000.00 as well as a monthly housing allowance of US\$1,800. He was also entitled to the use of two company vehicles, one solely for business and the other, a CVR Honda PBL 3356, for his personal use. Save for a short period when the parties lived at the Applicant's parents home, the parties and the four children had lived in rented accommodation, for which the Respondent paid \$9,500 monthly.

The Respondent alleged that because of the Applicant's behaviour at his place of work he was demoted from the position of Manager to that of Operator in Frank's with a considerable loss in income and benefits. He maintained that his salary of US\$7,838 had been reduced to US\$1,500 per month with a housing allowance of US\$500 and produced a letter dated 20.5.02 to this effect from Frank's

The Respondent deposed that his salary of US\$7,838 included a housing allowance of US\$1,500. It is to be noted that paragraph 3.04 on page 1 of the Respondent's former employment contract, exhibited as RB7 states that the monthly housing allowance is separate and apart from the salary referred to therein. However, the Respondent continued to drive the said CRV and continued to perform all the duties which he was accustomed to doing. Further no new Country Manager was appointed and the records of the security guards at Frank's continued to refer to the Respondent as "Manager. Apart from the said letter the Respondent produced no new contract of employment.

The Applicant alleged that the Palmiste apartment had been rented by Frank's for the sole purpose of accommodating the ex-patriate workers of Frank's and had been so rented since early 2001. The tenancy agreement (AB12) exhibited by the Respondent and executed by him on 26.1.02 states that the tenant is Frank's and that the one-year tenancy commenced on 1.2.02. The Applicant maintained that AB12 was a renewal contract.

After the break-up the Respondent said that he slept at the office and then moved into the Palmiste apartment for which his employers paid a monthly rent of \$2,800.00. But Paul de Verteuil the landlord had never seen him there. Further the Respondent was unable to confirm the particular Block in which the Palmiste apartment was located. Since this apartment had been rented furnished with effect from 1.2.02 and since the Respondent had left home on 4.2.02 there was no need for the Respondent to sleep at the office or take a mattress there for that purpose.

Further on 22.4.02 the Respondent executed a tenancy agreement on behalf of his employers in respect of the Bayside Towers Apartment at a monthly rental of US\$2,500. It is also significant that the Respondent's name is listed in the internal directory of the names of the residents of Bayside Towers, Cocorite. According to Randolph de Silva , Corporate Secretary of Bayside Towers:

**“In the event that the tenant is a company, the name of the actual resident goes into the directory”.**

The Respondent deposed that the Bayside Towers apartment is used “in pursuance of the business of Frank’s International in Trinidad and Tobago” but declined to say who was the occupant. He denied that he lived in this apartment.

The offices of Frank’s are located at La Romain and the Respondent’s duties required him to travel to Central and South Trinidad and he had insisted that he was living, in Palmiste. The Respondent produced a medical report dated 14.10.02 from Dr. Ahmad Rahman, a general medical practitioner of Woodbrook advising that the Respondent was being treated for hyper-tension. The Applicant maintained that this supported her contention that the Respondent would only be seeing a doctor in Port of Spain because he was actually living at Bayside Towers and not in Palmiste.

The Respondent had worked for Frank’s for approximately 13 years and had worked his way to the position of Country Manager earning a monthly income of US\$7,838. According to him he left his Wife on 4.2.02. Should he be believed when he said that, because of his Wife’s conduct, his income was reduced to almost a quarter of what it was? And did he simply accept this drastic reduction in income when he knew his actual earning capacity was four times that?

The Respondent produced no evidence that he objected to his demotion or of any steps he had taken to secure alternative employment or to persuade his employers that the Wife’s conduct would no longer adversely affect his employers since he had left her.

It is to be noted that the Respondent left home on 4.2.02 and this application was filed and served on the Respondent on 22.5.02. The letter from Frank’s advising the Respondent of his demotion and loss in income is dated 20.5.02,

some 2 1/2 weeks after the application was served. Up to the hearing of this application the Respondent was still performing all the duties of Country Manager. In the circumstances I did not believe that the Respondent had suffered any loss in income or benefits. I concluded that his purported demotion and loss in income were not genuine and had been orchestrated by the Respondent in collaboration with his employers.

### **RESPONDENT'S CREDIBILITY**

The Applicant deposed that she had been forced to borrow money from her friend Rhonda to pay rent and to meet day to day living expenses as well as the cost of her trip to England as the Respondent had drastically reduced her allowance. The Respondent maintained that he had given the Applicant two months' rent in cash for February and March 2002 while the rent for May 2002 was deducted from his deposits. However the Applicant exhibited bank deposit slips in respect of the rent for February, March and May, 2002. It is clear from the Applicant's deposit slip dated 6.5.02 that the rent for May 2002 had not been deducted from the Respondent's deposits. Rhonda had deposed that she had loaned the Applicant approximately \$50,000 while under cross-examination the Applicant calculated a total of \$45,000. However, the Respondent's attorney chose not to cross-examine Rhonda.

Lall deposed to having given the parties \$38,500 to purchase household appliances and when challenged, produced his bankbook in support. He also deposed to the Respondent misbehaving and abusing the Applicant when he was intoxicated. The Respondent denied these allegations, yet his attorney declined to cross-examine Lall.

Hamid deposed that he was present at the office on the night of 10.3.02 when the Respondent being intoxicated, smashed the contents of the office and the windscreen of a vehicle and assaulted Hamid. Hamid deposed further that the Respondent had ordered him to report that the Applicant had done the damage

at the office. The Respondent denied these allegations but his attorney declined to cross-examine Hamid.

The Applicant, Lall and Hamid all alleged that the Respondent was a heavy drinker which the Respondent denied. Further, the Applicant exhibited receipts from TGI Fridays showing the Respondent to have paid large sums for a number of alcoholic drinks over short periods. The Respondent maintained that he had not consumed all those drinks but had purchased drinks for other persons as well.

In his affidavit the Respondent deposed that because of his demotion he had had to purchase a 5-year old Mazda vehicle. However, in cross-examination he admitted that he had never bought such a vehicle and that the negotiations there-for had broken down. The Respondent gave no explanation for those inconsistent statements.

It is also to be noted that while he was earning in excess of US\$7,838 per month the Respondent used to send £100 per fortnight to Stacey but after his salary had been reduced to US\$1,500/\$2000 he was sending her £125 per fortnight.

### **FINDINGS**

1. The three (3) children listed in the Originating Summons were children of the family. Prior to the marriage the Respondent was aware that the children's biological father was unemployed and had not maintained them for a number of years. Further upon marriage, the Respondent assumed full responsibility for their maintenance.
2. The Respondent had suffered no demotion or loss in income or allowances since the break-up. He continued to receive a monthly salary of at least US\$7,838, a housing allowance of US\$2,500, an annual bonus of US\$10,000 and additional benefits (use of car etc.). There had been no reduction in the Respondent's standard of living.

3. The Applicant had no earning capacity. Prior to their marriage the Respondent was well aware of the state of the Applicant's health, and of her lack of earning capacity.
4. The Respondent resided in an apartment at Bayside Towers for which his employers paid a monthly rent of US\$2,500 or TT\$15,000 approximately.
5. The Respondent had never resided in the Palmiste apartment
6. The Respondent had left the Applicant and the children in the matrimonial home and had made no adequate financial arrangements for their support.
7. Where there was a dispute on the facts, I found that the Applicant was more credible.

## **LAW**

This application has been brought pursuant to section 28 of the Matrimonial Proceedings and Property Act as amended by Act No. 20 of 1982 (the Act). Section 28 provides:

28 (1) *Either party to a marriage may apply to the Court for an order under this section on the ground that the other party to the marriage (in this section referred to as "the respondent" –*

(a) *being the husband, has wilfully neglected –*

(i) *to provide reasonable maintenance for the applicant; or*

(ii) *to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family to whom this section applies.*

- (b) *being the wife, has wilfully neglected to provide, or to make a proper contribution towards, reasonable maintenance –*
  - (i) *for the applicant in case where, by reason of the impairment of the applicant's earning capacity through age, illness or disability of mind or body, and having regard to any resources of the applicant and the respondent respectively which are, or should properly be made, available for the purpose, it is reasonable in all the circumstances to expect the respondent so to provide or contribute; or*
  - (ii) *for any child of the family to whom this section applies.*
  
- (2) *The Court shall not entertain an application under this section unless –*
  - (a) *the applicant or the respondent is domiciled in Trinidad and Tobago on the date of the application; or*
  - (b) *the applicant has been habitually resident in Trinidad and Tobago throughout the period of one year ending with that date; or*
  - (c) *the respondent is resident in Trinidad and Tobago on that date.*
  
- (3) *This section applies to any child of the family for whose maintenance it is reasonable in all the circumstances to*

*expect the respondent to provide or towards whose maintenance it is reasonable in all the circumstances to expect the respondent to make a proper contribution.*

(4) *Where the child of the family to whom the application under this section relates is not the child of the respondent, then, in deciding –*

(a) *whether the respondent has been guilty of wilful neglect to provide, or to make a proper contribution towards, reasonable maintenance for the child; and*

(b) *what order, if any, to make under this section in favour or for the benefit of the child,*

*the court shall have regard to the matters mentioned in section 27(3).*

(5) *Where on an application under this section it appears to the Court that the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but it is not yet possible to determine what order, if any, should be made on the application, the Court may order the respondent to make to the applicant until the determination of the application such periodical payments as the Court thinks reasonable.*

(6) *Where on an application under this section the applicant satisfies the Court of any ground mentioned in subsection (1), then, subject to section 30, the Court may make such one or more of the following orders as it thinks just;*

- (a) *An order that the respondent shall make to the applicant such periodical payments and for such term as may be specified in the order;*
  - (b) *An order that the respondent shall secure to the applicant, to the satisfaction of the Court, such periodical payments and for such term as may be so specified;*
  - (c) *An order that the respondent shall pay to the applicant such lump sum as may be so specified;*
  - (d) *An order that the respondent shall make to such person as may be specified in the order for the benefit of the child to whom the application relates, or to that child, such periodical payments and for such term as may be so specified;*
  - (e) *An order that the respondent shall secure to such person as may be so specified for the benefit of that child, or to that child, to the satisfaction of the Court, such periodical payments and for such term as may be so specified.*
  - (f) *An order that the respondent shall pay to such person as may be so specified for the benefit of that child, or to that child, such lump sum as may be so specified.*
- (7) *Without prejudice to the generality of sub-section (6)(c) and (f), an order under this section that the respondent shall pay a lump sum –*

- (a) *may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met;*
- (b) *may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the Court.*

*And section 27(3) of the Act provides:*

*(3) In deciding whether to exercise its powers under section 25 or 26 against a party to a marriage in favour of a child of the family who is not the child or that party and, if so, in what manner, the Court shall have regard (among the circumstances of the case)-*

- (a) to whether that party had assumed any responsibility for the child's maintenance and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;*
- (b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;*
- (c) to the liability of any other person to maintain the child.*

The Applicant has satisfied the requirements of section 27(2) of the Act, i.e. that she is domiciled in Trinidad and Tobago or has been habitually resident here for one year prior to her application. The Applicant must now establish that the Respondent has failed to provide herself and/or the three children of the family with reasonable maintenance and that the neglect was wilful.

*In Brannan v Brannan 1973 1 AER 38* Sir George Baker, President of the Family Division stated at page 42 that a husband's duty to maintain his wife has long existed under the common law. In this case it was held that the word "wilful" did not connote any malice or wickedness on the part of the husband. The husband's neglect was wilful if, with the knowledge of the relevant facts, he deliberately failed to pay to the wife such sums as, in the opinion of the court, were in all the circumstances sufficient for her reasonable maintenance and support. The wilfulness amounts to nothing more than this, that the husband knows what he is doing and intends to do what he is doing.

At page 44 Sir George Baker referred also to the definition of "wilful" in *Stone's Justices' Manual 104<sup>th</sup> Edn. (1972) vol. 1* at pages 1411-1412 as follows:

*"the phrase "wilful neglect to provide reasonable maintenance" ... imports some element of matrimonial misconduct ... The wrongdoing may however consist of the very fact of a failure to maintain: there need be no other matrimonial offence imputed to the husband."*

In *Price v Price 1951 P. p 413* Hodson L.J. stated at p. 421:

*"A Wife has no right to a separate maintenance in a different home unless she can justify the fact that she is living apart from her husband."*

Here the evidence is that the parties and the four children were living together in a home rented by the Respondent's employers for the monthly sum of

\$9,500.00. Further on 4.2.02, the very day when the Applicant had been discharged from the Cross Crossing Nursing Home in San Fernando after recovering from a bout of dengue fever, the Respondent left the said home and made no adequate arrangements for the maintenance of the Applicant and/or the children of the family. It is clear that the separation was not consensual and that the Respondent was in desertion.

In Scott v Scott 1951 P 245 Hodson J. considered what is “reasonable maintenance” and stated at page 248:

*“ ... the question of what is reasonable maintenance for the Wife and the children has to be considered with reference to the husband’s common law liability to maintain his wife and children, the word ‘reasonable’ no doubt has to be interpreted against the back-ground of the standard of life which he previously had maintained.”*

In Mc Ewan v Mc Ewan 1972 1 WLR 1217 at 1223 Rees J. stated:

*“Whether the man is in employment or not it is open to justices in an appropriate case upon direct evidence or justifiable inference to make an order on the basis of potential earning capacity. An order may more readily be made where justices are satisfied that a husband has not been frank in his evidence before them.”*

In Mc Ewan it was held, inter alia, that since the justices had concluded that the husband had not been frank as to his financial position, they were entitled to have regard to the realities and to draw the inference that his actual or potential earning capacity was greater than he had stated and they were entitled to find on the whole of the evidence that the husband’s earning capacity justified the order which they had made.

In Le Roy-Lewis v Le Roy-Lewis 1955 P.1 Barnard J. stated that where a marriage has ended through no fault of the wife, there is no reason why the wife should go back to earning her living in order to reduce the husband's liability to maintain her.

And in Kershaw v Kershaw 1966 P. 13 it was held that the court should not drastically reduce the standard of living of the wife in order that the husband can go on living in his old style.

Having considered the provisions of Section 28(1)(a)(i) and (ii) and (3) of the Act and the evidence before this Court I found that the Respondent had wilfully neglected to provide reasonable maintenance for the Applicant and the said three children of the family.

#### **REASONABLE MAINTENANCE**

The Applicant's evidence was that she needed at least \$8,250 monthly (excluding school requirements, holidays and gifts) for her to exist modestly. I moved next to consider what was reasonable maintenance for the Applicant and the three children. In order to do so I considered the evidence of the Respondent's means.

The Respondent had not denied that prior to his leaving home he used to give the Applicant approximately \$19,000.00 monthly to meet the rent and other household expenses for the entire family and that he had paid for the parties and the entire family to vacation in Tobago, Barbados and the U.S.A. He insisted that because of the Applicant's behaviour, his income had decreased considerably and that he could only afford to pay the sum of \$3,000.00 for maintenance of the Applicant and the children. Having regard to my findings already made herein, I rejected that contention.

In Gengler v Gengler 1976 2 AER 81 the Family Division of England approved of the one-third rule on an application of this nature. At page 84

Latey J. stated:

*“I entirely and respectfully agree with what Sir George Baker P. has said about the one third calculation being a fair and useful starting point in proceedings in the Magistrate’s Court as it is in proceedings in this division. It is to be remembered that it is only a starting point. It may and often does end up also as the finishing point. But in many cases it does not ...”*

In Rodewald v Rodewald 1977 2 WLR 191 Omrod LJ stated at p. 197 “the Divisional Court following on Wachtel v Wachtel 1973 Fam. 72 invariably takes the two gross incomes to arrive at the joint incomes”.

Here the Applicant had no income of her own. And the Respondent’s monthly income was at least US\$7,838. It is to be noted that I did not include his housing allowance, any part of his annual bonus (US\$10,000) or the value of the use of any of the two vehicles, including the CRV, which were wholly maintained by his employers.

Since the Applicant had no income of her own, one third of their joint incomes is US\$7,838.  $\div 3 = \text{US\$ } 2,612.66$ .  $\text{US\$}2,600. \times 6 = \text{TT\$}15,600.00$ . I found that the Respondent’s actual monthly income was approximately TT\$47,000. Further, one-third of their joint incomes is in the region of TT\$15,000.

In Furniss v Furniss 1982 12 Fam. Law 30 the Court of Appeal reduced periodical payments ordered to be paid by the husband in favour of the wife and children. Omrod LJ stated that the net income was the only satisfactory way of dealing with such cases. It was old-fashioned to take the gross income into consideration, and that one-third of the gross income to a wife was virtually unsatisfactory as it was no longer helpful.

The decision in Furniss above was followed a week later by Stockford v Stockford 1982 12 Fam Law 30 also in the Court of Appeal, in which Omrod LJ sought to clarify the decision in Furniss and said at page 31:

*“... The court must, therefore look broadly at the over-all position rather than enter upon a detailed investigation of household budgets. Estimates of expenditure nearly always equal, and usually exceed income in these cases.”*

The following Note on Furniss and Stockford appeared in the said report at page 32.

“Note on Furniss and Stockford”

*The case of Furniss caused some consternation when first reported in The Times as practitioners thought that Omrod LJ had stated that periodical payments should be calculated on net and not gross incomes. This was clearly contrary to statements of his in Rodewald 1977 2 AER 609. In fact Omrod LJ did not intend to give this impression and has taken the opportunity in Stockford of stating more clearly the approach that should be taken in these cases. It is the net effect of any order that must be looked at and this includes assessing the respective tax liability of the spouses and also their liability for housing costs. It is in stressing these latter costs that these two cases break new ground ...”*

In cross-examination the Respondent stated that he was spending \$950.00 per month for food for himself alone and was renting the Palmiste apartment at \$2,800.00 per month. However the Respondent failed to give a breakdown of his tax and other deductions whether his income was US\$7,838 or US\$1,500 monthly.

I determined that a reasonable monthly sum for the Applicant's maintenance should take account of the following:

Rent	\$2,800
Food	\$ 950
Utilities (electricity, telephone, cable and internet)	\$2,000
Gas/cooking gas	\$ 835
Medical expenses	\$ 240
Clothing	\$ 300
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	\$7,125
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In arriving at a reasonable sum for the maintenance of the three children I took account of the following:

Food	\$2,250
Books and Uniforms	\$ 500
Fees for lessons	\$ 270
Travelling/pocket change	\$ 750
Medical expenses	\$ 500
Clothing	\$ 600
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	\$4,670
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In the result I considered \$6,500 monthly to be reasonable maintenance for the Applicant and \$1,500 per month to be reasonable maintenance for each of the three children.

This Court made no order for payment of maintenance from the date of the application i.e. 2.5.02.

Dated this 10<sup>th</sup> day of November 2004.

.....  
Amrika Tiwary-Reddy  
Judge