



**IN THE SUPREME COURT OF BERMUDA  
DIVORCE JURISDICTION  
2006 No. 183**

**BETWEEN:**

**AMANDA CATHERINE THOMPSON**

**Petitioner**

**- and -**

**ANDREW JOHN THOMPSON**

**Respondent**

Ms. Lomas for the Petitioner; and  
Ms. Cartwright for the Respondent.

**JUDGMENT**

1. This matter comes before me on appeal from an order of the Registrar awarding interim periodical payments to the wife and for the benefit of the two children of the marriage in the global sum of \$1,500 per month. That order was made on 5<sup>th</sup> December 2006. It has not been drawn up, but the Registrar's note reads:

“Wife had spent \$37K + \$6,400 of joint savings from \$50K. Left only \$6,000 for hus. \$1500 a month at the end of each month. - H. undertakes to pay ½ medical and dental payments to begin at end of Jan 07. Costs to applicant.”

2. Ms. Lomas for the wife argues that it was wrong in law for the learned Registrar to take into account capital sums taken by the wife, as they should only be brought into account when making the final order for ancillary relief. She also contends that the order is manifestly inadequate.

3. Although there was no dispute about the principles to be applied on such an appeal, there was some uncertainty as to what the governing provisions are. In my judgment such an appeal from the Registrar is governed by Order 58 of the Rules of the Supreme Court 1985, which apply by virtue of Rule 3 of the Matrimonial Causes Rules 1974<sup>1</sup>. The practice on such an appeal is set out in the Note at 58/1/3 of the Supreme Court Practice 1999 ed., and is that the appeal is by way of rehearing.

4. As to the principles to be applied on an application for an interim order, both parties agree with the principles adumbrated in F v F (1983) 4 FLR 382, which are stated in the headnote as follows:

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<sup>1</sup> Rule 3(1) provides “Subject to the provisions of these Rules and of any enactment, the Rules of the Supreme Court 1985 shall, notwithstanding the provisions of Order 1, rule 2(2) thereof, apply with the necessary modifications to the practice and procedure in matrimonial proceedings.”

“On an application for maintenance pending suit in an ordinary case, a broad view should be taken of the means and income of the parties; the court should take into account the income and earning capacity of the parties and such other matters as might be appropriate to the individual case;”

5. While I do not entirely accept the submissions of counsel for the Petitioner that the learned Registrar should not have taken into account her substantial withdrawals from joint savings, I do not think that very much weight should have been given to that at this interim stage. Capital adjustments should normally be left to the full hearing.

6. In any event, I have looked at the matter anew. I make the following provisional findings as to net earnings:

(i) The husband contends for an average monthly income of \$7,027, that being his actual average for the year to 31<sup>st</sup> October 2006. The wife argues that he was promoted in March 2006, and so a full year's average is unrepresentative. She says (and she has access to the bank account into which this was paid) that his average income for the five months May to September was \$9,489. According to his employer the increase on his promotion to Maitre D' was \$40 per week plus a 25% increase in his gratuity share. I also have to take into account that we are now in the winter months. Doing the best I can on the information before me, I attribute to him for the purpose of this hearing an average monthly income of \$7,500.

(ii) The wife earns \$4,146.76 per month, but that does not take into account an annual performance bonus, which was \$5,400 last year. She may not have received it yet for this year, but I think that the possibility should be taken into account. For the purposes of this hearing I attribute to her an average monthly income of \$4,500.

7. The wife currently pays rent of \$3,200 p.m. The husband complains that if she had stayed in the matrimonial home that would only be \$1,330. He now pays rent of \$35 a week, but that is for dormitory accommodation. The husband says that he has contracted to take a one bedroom apartment for \$2,500 p.m. from 13<sup>th</sup> April.

8. The wife claims other household expenses of \$2,160 p.m., including \$1,200 for groceries. She also claims additional expenses for herself of \$1,750 (including \$250 for clothes and \$600 for 'personal needs'; \$300 for entertainment; and \$400 for travel). She claims \$215 p.m. for running expenses for the car. She then claims 'personal expenses' of \$691.66 for the older boy; and \$605 for the younger (and this also includes travel). These all come to \$5,423 p.m. (\$8,623 p.m. when her current rent is added back in). As a matter of broad impression, I consider those expenses to be on the high side, and that

approximately \$1,600 can come off (including the \$600 for 'personal needs' and, at this point, the travel). For the purposes of this hearing, therefore, I estimate her monthly expenses, including her actual rent, at approximately \$7,000. On that basis she has a shortfall of \$2,500 per month. That would normally be the figure that I would order, and I have no doubt that the respondent can afford to pay it, given his income.

9. That shortfall would, however, have been considerably less if she had stayed in the matrimonial home. The question is, therefore, whether that sum should be discounted to take into account the fact that the wife could have remained in cheaper accommodation until the end of February 2008. I have no reason to doubt that evidence, confirmed as it is by the letter from the CEO of the Respondent's employer. The Petitioner argues that she wanted to get on with her new life as soon as possible, and should not be penalized for doing so. In the long term she is certainly going to have to incur at least that rent to acquire suitable property.

10. I think that the way to resolve this on an interim basis is to order the husband to pay what is necessary to enable the wife to maintain the children as things stand now, which I am quite satisfied that he can afford to do, and leave any adjustment for her fiscal imprudence, if the court decides that that is what it was, to the full hearing.

11. I therefore consider that the sum allowed by the Registrar was too low, and I allow the appeal and substitute for the Registrar's order the sum of \$2,500 per month for the two boys (\$1,250 each). I make no order for the wife herself. I see no reason to interfere with the Registrar's decision that those payments are to be made at the end of each month, and are to start at the end of this month, January. However, in view of the increase, I delete the Registrar's proviso that the husband is to pay one half of any medical and dental payments.

12. As to costs, although the wife has won a substantial increase it may be adjusted later. She has largely brought the difficulties that I have had to deal with on this appeal on herself. In any event this matter is not complicated, and her energies may have been better spent pressing on to the full hearing as quickly as possible. I therefore make no order as to the costs of this appeal. I leave the Registrar's order as to the costs below (which she awarded to the wife) undisturbed.

Dated this 19<sup>th</sup> day of January 2007

Richard Ground  
Chief Justice