



**IN THE SUPREME COURT OF BERMUDA**

**CIVIL JURISDICTION**

**2000: 188**

**BETWEEN:**

**G**

**Petitioner**

**-and-**

**G**

**Respondent**

**RULING**

**(RE C-CHILD MAINTENANCE PAYMENTS)**

Date of hearing: February 7, 2007

Date of Ruling: February 26, 2007

Mr. Christian Luthi, Conyers Dill & Pearman, for the Petitioner

Ms. Keren Lomas, Lomas & Co., for the Respondent

**Background**

1. On May 31, 2001, a Consent Order was entered dealing with all ancillary relief matters in the present proceedings. According to the recitals, each party gave and received full and frank disclosure, obtained independent legal advice and agreed to the settlement terms freely.
2. Under paragraph 7 of the Consent Order, the Petitioner is required to pay US\$1500 per month for the child of the family, C (born on February 28, 1992). Under paragraphs 8 and 9, the Petitioner is required to pay 80% of the child's educational and extra-curricular expenses. Paragraph 10 requires the Respondent to render a quarterly statement of the latter expenses.
3. By a Summons issued on August 25, 2006, the Respondent applied for an increase in the periodical payments for C. She seeks an increase from \$1200 to \$4500 per month the payments due under paragraph 7 of the Consent Order, and to delete paragraphs 9 and 10, which require the Petitioner to pay 80% of C's extra-curricular expenses as accounted for by the Respondent. She seeks to increase the Petitioner's responsibility for educational and extra-curricular expenses to 100% from 80% and as regards the latter expenses to substitute a

fixed amount in a monthly payment order instead of accounting for these expenses on an ongoing basis.

4. The Petitioner accepts that his means permit him to meet the proposed increased payments the Respondent seeks. But he wishes to challenge the assertions of financial pressure which his now re-married ex-wife relies on as a central plank of her case. Towards this end, he applies by Summons dated January 22, 2007 for an Order that Respondent “*be directed to produce the information and documents set out in a letter dated 30 November 2006 to the Respondent’s attorney*”. It is this application which falls for present consideration.

#### **The documents sought and their relevance to the Respondent’s application**

5. The Respondent has provided substantial disclosure of her own financial position and, to a lesser extent, the position of her new husband (“B”) as well. She deposes that she lives in her own house and receives no financial support from her current spouse, who spends most of his time in a rented apartment in New York and earns substantially less than she does. Joint tax returns confirm the income position and also reveal the existence of certain investment accounts.
6. The Petitioner seeks disclosure of (a) the investment accounts referred to in the 2005 Federal Income Tax returns filed jointly by the Respondent and B (b) disclosure of any additional shares which did not for 2005 tax purposes generate income, (c) disclosure of all the financial resources of B including, if he is the beneficiary of any trusts, the assets of such trusts and his entitlement thereunder. B’s tax returns since the date of his marriage to the Respondent are also sought; and (d) the latest investment value of “zunafish.com” and any other assets held by B.
7. Information about the financial position of B is potentially relevant to the veracity of the Respondent’s assertions that (a) she receives no financial support from B, and (c) is, accordingly, financially strapped, having purchased her own property and assumed a mortgage obligation more than twice that of her rent at the time of the Consent Order. However, it is necessary to consider how these matters impact on the specific claim she makes for increased maintenance for C, in financial terms.
8. According the budget exhibited to the Respondent’s August 18, 2006 Affidavit, C’s personal expenses are estimated at \$2187 per month. Neither this estimate, nor the assertion made in paragraph 1 that C’s personal expenses have doubled over the five years since the Consent Order was made, are challenged by the Petitioner in his Affidavit in response of October 2, 2006. He challenges his obligation to supplement the Respondent’s voluntarily assumed increased household expenses, disputes her estimates for extra-curricular activities and suggests that B’s financial resources should be taken into account. She claims \$8000 per year for extra-curricular activities, which the Petitioner complains is not particularized. The \$2000 the Respondent claims for cultural events he says is excessive. But these amounts would represent an additional \$830 per month, bringing the total referable to C directly (and excluding accommodation charges) to just over \$3000 per month.
9. The Petitioner’s own budget refers to \$3600 (or \$300 monthly) paid annually for extra-curricular expenses, but this seems to exclude substantial sums expended on C during time spent with his father. Assuming the former sum represents 80% of all such expenses, the annual sum at present is \$4500. It appears that the Respondent is seeking to more than double the existing amount the Petitioner is currently paying for extra-curricular activities while C is with his mother. This will have to be further explored on the hearing of the Respondent’s application. However, on the face of it, the Order contemplated that the Petitioner would pay 80%, so it seems that an element of this increase is attributable to accommodation related expenses, although it appears that some such extra-curricular expenses the Respondent would like to incur cannot be agreed. But assuming these amounts to

10. Whether it is reasonable for the Petitioner to contribute to this extent to C's notional accommodation costs will have to be decided on the hearing of the substantive application. It is easy to understand why the Petitioner should be aggrieved about being asked to, on the face of it, contribute to his ex-wife's household with another man, particularly as she has seemingly chosen to purchase a house with an overhead of twice what her rental income was when the Consent Order was entered into less than six years ago. Equally, unless the Respondent's alleged financial difficulties are borne out, it is difficult to see why the Petitioner should now assume 100% of the educational and extra-curricular expenses when it was originally agreed that he should only pay 80%.
11. It may seem suspicious to a man of more than modest means that his ex-wife is now married to a man of modest means, but to the objective bystander, the limited resources her new spouse claims to have is not incredible. The Respondent's case that she receives no financial assistance whatsoever from her new spouse is, it must be conceded, rather less plausible, at first blush. In any event, the Petitioner's obligation is to maintain his son, and the Respondent is entitled to afford the child a stable and reasonably comfortable home. And the crucial issue is what the child's reasonable expenses are, only indirectly does what the mother can afford to pay come into question. The relevance of her current spouse's financial position is even more indirect.
12. An exclusionary statement of principle may be found in the following dictum of Bridge LJ in *Wynne-v-Wynne and Jeffers*[1981] 1 WLR 69 at 74H<sup>1</sup> :
 

*"It will only be in the rarest cases that it will be possible to say that full information about the property and income of the third party, whether the third party is a new spouse, a new mistress, a new lover, a rich uncle or a mother or friend or relation from whom one of the spouses has expectations, will be relevant to the issue the court has to decide..."*
13. However, a more inclusive statement is found in the following passage from '*Rayden & Jackson on Divorce and Family Matters*', which Ms. Lomas also helpfully placed before the Court:

*"The court cannot redistribute assets which belong to a third party. Accordingly, where the payer's new spouse or partner has resources, the court cannot make an order against them. However, the fact that the existence of those resources relieves the payer from outgoings and obligations...is a circumstance of the case which the court is entitled to take into account..."*<sup>2</sup>

## Findings

14. Having regard to these principles, and the need to manage civil cases in a cost-effective manner, I find that it is reasonable that the Respondent should be ordered to disclose<sup>3</sup>: (a) the investment accounts referred to in the previously disclosed 2005 Federal Income Tax returns filed jointly by the Respondent and (b) any additional shares which did not for 2005 tax purposes generate income. This flows from discovery she has already given, and is reasonably required to understand the true financial position

<sup>1</sup> Cited at paragraph 10.14 Burrows, 'Evidence in Family Proceedings' (Family Law: 1999).

<sup>2</sup> 18<sup>th</sup> edition, Volume 1, paragraph 16.38. Although this statement was made in relation to the paying party, in my view the principle must apply to the payee as well.

<sup>3</sup> To the extent that the relevant information is within her knowledge and/or that any relevant documents may be in her custody, possession or power.

disclosed thus far in relation to the joint tax filing of the Respondent and her current spouse.

15. The requests for disclosure of *all* the financial resources of B including, if he is the beneficiary of any trusts, the assets of such trusts and his entitlement thereunder, the value of all of his assets and B's tax returns since the date of his marriage to the Respondent, are in my view unreasonable and oppressive in all the circumstances of the present case. I would merely order that the Respondent further disclose (c) whether B is the beneficiary of any trusts, the assets of such trusts and his entitlement thereunder and (d) the latest investment value of "zunafish.com", which B appears to admittedly own .

### **Conclusion**

16. Assuming the Respondent gives discovery which the Petitioner cannot rationally challenge, the parties should seek to agree a variation of the Consent Order. The maintenance amounts previously ordered must be liable to upwards revision in any event having regard to (a) increases in the cost of living over the last 5 ¾ years, and (b) increases attributable to the increased age of C. The Respondent's suggestion that a global amount should be fixed to cover extra-curricular expenses, to replace the cumbersome accounting regime under the Consent Order, seems eminently sensible.

17. Since the Petitioner can pay all that the Respondent seeks, but objects in principle to having to support the Respondent, as opposed to his son, and is understandably dubious about her new husband's purported inability to lend her any financial support whatsoever, the area of controversy falls within a very narrow compass. It is to be hoped that common sense will prevail, and all outstanding issues pragmatically resolved.

18. I would reserve the costs of the present application until the determination of the Respondent's variation application.

Dated this 26<sup>th</sup> day of February, 2007

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KAWALEY J.