



In The Supreme Court of Bermuda

DIVORCE JURISDICTION
2011 No. 119

BETWEEN:

L. P.

Petitioner

-AND-

J. P.

Respondent

Date of Hearing: October 29, 30, 2012
Date Judgement Circulated/Delivered on July 24, 2013

Marshall Diel & Myers – for the Petitioner
In Person – for the Respondent

1. The wife and husband (so called although they are now divorced) were married on 16th July 2006.
2. There are two applications before the court – the wife’s application for ancillary relief which was filed on the 22nd September 2011 and the husband’s application, for shared care and control of “G” the only child of the union, filed on the 22nd September 2011. G was born on the 28th April 2009. The husband’s application was adjourned to be dealt with at another hearing. The wife’s application seeks periodical payments for herself and the child of the family, a lump sum payment and such further relief as may be just.
3. The parties courted several years before they married on the 16th day of July 2006.
4. The wife filed her petition for divorce on August 4, 2011. Decree Nisi was granted on 30th September 2011 and was made absolute on 15th November 2011. This marriage lasted 5 years.
5. Although the issues ought to have been straight forward this matter turned out to be difficult and protracted. The husband steadfastly refused to provide full and frank disclosure and, he failed to comply with numerous court orders for disclosure of his earnings and assets.
6. From the 31st January 2011 and thereafter the husband appeared in person and represented himself as Messrs. Trott & Duncan removed themselves as his attorney of record.
7. During his appearances the husband was obstinate, recalcitrant and explosive in his behavior both inside and outside the court room. On two separate dates after the days sitting was adjourned he behaved in a threatening and intimidating manner towards Counsel for the wife who expressed concern for his safety. On both occasions Counsel was forced to seek refuge in the Supreme Court building. The husband refused to leave the vicinity for some considerable time and Counsel had to await his departure before venturing out. Once the Court learnt of this behavior advice was given that Counsel should report the matter to the Registrar. The husband’s behaviour precipitated a police guard being stationed in the Judge’s chambers during the proceedings until the end of the hearing.
8. The record shows that it took “four court orders and five months” for the husband to file his affidavit of means which exhibited no supporting documentation. The husband refused to file any documents in support of his financial position and a further court application by Counsel for the wife was necessary so that she could obtain an order to personally secure th bank statements. Two further court appearances were necessary to obtain a valuation of the former matrimonial home

and, notwithstanding court orders the husband refused to sign the letter of engagement. Consequently, the wife had to bear the full cost of the valuation. The husband refused to answer rule 77(4) requests and, even though a court order was obtained for him to provide the information he failed to provide answers or documentation in support of his financial position. The rule 77 (4) request was enforced one week prior to the hearing, by the wife's issuing committal proceedings. The husband's response was to provide a short letter, with "vague details", with no supporting documentation in response to some of the questions.

9. On the 15th day of February 2013, during the final hearing of the wife's ancillary relief application, the husband was given an opportunity to make his final submission to the Court however, before doing so he requested an adjournment so that he could provide an updated valuation. Because of the continuing decline in property prices, despite Counsel for the wife's objection to the request, to be fair the Court granted the application and, ordered that an updated valuation should be provided by March 8, 2013. The husband has not provided an updated valuation to the Court and he failed to appear at the resumed hearing on March 26, 2013. Counsel for the wife urged the Court to bring this matter to a conclusion and to proceed in his absence. Based on the husband's history of procrastination, contemptuous behaviour and having been notified with of date of the resumed hearing the court proceeded with the hearing in his absence.
10. The Court has considered all the evidence in this case consisting of the affidavits, exhibits and the oral evidence of the parties as well as the submission of Counsel for the wife.

Earnings

11. The Court is satisfied and find that the wife is employed as a fulltime preschool teacher. She no longer has an option to work in the afterschool program. She receives a net income of \$5,327.96 monthly. She has been the primary carer for the child of the family. During the subsistence of the marriage she provided full support to the husband so that he could continue to work on his business interests.
12. The wife's inescapable monthly expense for herself and the child is \$7,790.26. This sum includes \$1,000.00 monthly payment in reduction of her legal fees which stands at \$45,000.00 at the time of this hearing.
13. If the husband meets the order of \$400.00 monthly to be paid directly toward G's nursery fees for the maintenance of the child the wife's monthly shortfall would be reduced. However the husband has not been consistent. He continues to refuse to pay the court ordered maintenance and has repeatedly told Madam Registrar, the wife and the owner of the nursery school that he will not pay maintenance for the child until he has had the child's care and control. At the time of this hearing the husband was \$4,300.00 in arrears.

Husbands Earnings

14. The husband who is a self-employed construction worker is the owner of a limited liability company which provides construction services. Also, he is the sole owner of Concrete Tech which is a division of Company and provides the same services. Throughout these proceedings the husband has contended that he is not working and that his businesses have faltered.
15. The husband says that Company was conceived two years prior to his marriage to the wife and she has had no involvement in this business. He is not able to maintain the standard of living which was enjoyed by the family in the past as his financial circumstances have changed substantially as a result of the economic downturn which the Island has experienced and continues to experience.
16. The wife rejects the husband's contention that his standard of living has been affected by the economic downturn on the Island. She maintains that upon review of the bank statements they "starkley illustrates that with effect immediately from July 2011" when she left the matrimonial home the husband stopped depositing monies into his accounts. During the marriage the husband's businesses were very successful and she believes that he deliberately seeks to present himself as being in a precarious financial position. Having reviewed the bank statements it is clear that any reduction in income, from the husband's companies, coincides exactly with the time they separated.
17. By way of illustration the wife says at paragraph 21 of her affidavit dated the 8th June 2012:
 - a. **Company savings account:**
 - In the 7 months from January 2011 until July 2011 when I left the matrimonial home, the Respondent deposited \$102,281.59 into this account at an average of \$14,611.65 per month
 - In the month immediately after I left the Respondent deposited just \$0.86.
 - In the 9 months after I left up to March 2012 the Respondent deposited \$19,348.01 at an average of just \$2,149.78
 - b. **Personal Account**
 - In the 7 months from January 2011 until July 2011 when I left the matrimonial home, the Respondent deposited \$95, 713. 44 into this account at an average of \$13,673.34 per month
 - In the 9 months after I left up to March 2012 the Respondent deposited \$39,220.23 at an average of \$4,357.80.
 - The balance at March 2012 is zero
18. Did the husband as the wife alleges stop depositing monies into his accounts after the separation? Has the husband's standard of living been affected by the

economic downturn? Has the husband taken deliberate steps to hide his income and his assets? When the husband and wife's evidence conflict the Court prefers and accepts the wife's evidence. She has impressed the Court with her straightforward and frank presentation.

19. It is clear to the Court that the husband is being less than frank. The husband for some considerable time refused to provide any details as to his financial position. When he did at first he did not mention that he had purchased any vehicles.
20. The wife has demonstrated that he was making deposits into the Company savings account at an average of \$14,611.60 monthly and his personal account at an average of \$13,673.34 monthly. Immediately after they separated the amounts dropped significantly.
21. In his affidavit the husband did not mention that he owned any vehicles. The wife made requests for this information which the husband provided only after the wife issued contempt proceedings. In a letter dated October 20, 2012 he gave a list of items which he says was previously owned by him, but was now sold or owned by someone else. The wife did not accept this information and made inquiries with the Transport Control Department (TCD) and Marine and Ports. The result showed that the husband was not being truthful. In effect a letter from TCD confirmed that Concrete Tech owned three vehicles namely :

- (1) A White Isuzu Elf Truck
- (2) A Green Hino Dump Truck and,
- (3) A Black Nissan Truck

Further a letter from Marine and Ports confirm that the husband owns a jet ski.

22. The husband was cross-examined as to his ownership of the vehicles. The Court rejects the husband's evidence that these vehicles are owned by other individuals. The license of all the vehicles remain in the name of "Concrete Tech" and from time to time the husband is seen using one or other of the vehicles. Indeed, he has been given ample opportunity to provide documentary proof that the vehicles are no longer his, and that he only has permission to use them, but he has failed to do so. The only evidence the Court has before it is that the husband remains the owner of the vehicles.
23. The inadequate state of the evidence is due entirely to the husband lack of candor and his persistent obstruction and fabrication. He has not complied with Court orders for production of his bank statements or assets. It is very telling, when the husband was asked in cross-examination how he was surviving without an income he said that he was living on cash which he had saved up from time to time. He knew that \$15,000 of this cash was taken but he did not know how much he has stashed.

24. Counsel for the wife submits that the husband suggested that \$15,000.00 of this sum was taken and it is incredulous for the husband to suggest that he knows how much money was taken from his stash if he did not know what was there in the first place. The Court agrees with Counsel, that this is another example of the husband's failure to tell the truth. The Court entertains no doubt that the husband has concealed his true earnings and has tried to hide his assets in an effort to defeat the wife's ancillary relief claim.
25. The husband had a very high standard of living during the marriage. He was able to undertake and pay for some of the renovations to the former matrimonial home without borrowing which he has set out in his affidavit; additionally, he has purchased a significant number of expensive items including the purchase of two jet skis, two trucks and a high lift. He bought expensive wheels for his trucks and would spray paint his trucks every year. In the Court's assessment the Respondent business owns the trucks. The black truck was purchased less than three years ago.
26. In relation to the wife's contributions, the Court accepts the wife's evidence and finds that she paid for the groceries, the car loan, the nursery fees in relation to G, life insurance, extracurricular activities and all other costs for G plus most of the household bills. In the main she made all other payments in the household as well as care for the family which allowed the husband time and resources to embark on the renovations of the former matrimonial home as well as his business endeavours. The Respondent was required to pay the balance on the mortgage at \$6,700.00 monthly and his cell phone bill. The wife is seeking 60% of the net equity of the former matrimonial home.
27. The Court is satisfied that the assets consist of ;
 - (a) The jointly held former matrimonial home which was purchased in 2007 for the price of \$965,000.00. The property is held by JLP Trust which is managed by the husband. It has a market value of \$1,225,000.00 less the outstanding mortgage of \$883,041.97 and \$90,412.30 (assessed as the cost of the sale of the property) leaving an equity of \$251,545.80.
 - (b) A Kia car valued at \$18,576.00 and, an investment of \$26,579.61 which are both owned by the wife.
 - (c) Three trucks (a black, a white and a green), two concrete pumps, a jet ski, high lift and an entertainment unit which the husband purchased for \$50,000.00. These items are owned by the husband. The value of the assets is not inconsequential. Additionally, it must be kept in mind that most of these items are used by the husband to earn a living and are tools of his trade. In all the circumstances of the case the Court places a value of between \$80,000.00 and \$100,000.00 on the assets owned by the husband.

28. What presumptions may reasonably be made against the husband given that the defective character of the material before the Court is almost entirely due to his persistent obstruction and fabrication. The husband did not comply with the Courts order for production of his bank statements. The wife has demonstrated that the husband was making deposits to the Company savings account at an average of \$14,611.00 monthly and his personal account at an average of \$13,000.00 monthly. Immediately after the parties separated the deposits in both accounts dropped off considerably. The Court rejects the husband's explanation that the reduction in his income is due entirely to the downturn in the economy.
29. How should the assets be distributed? The Court has considered and is guided by the Section 29 of the Matrimonial Causes Act 1974 factors as well as precedent. Counsel for the wife urges that the wife should be awarded at least 50% of the equity in the matrimonial home. He argues that she should receive a greater share of the assets to permit her to meet her needs and those of the child of the marriage. Regarding the financial needs, obligations and responsibilities which each has or is likely to have in the foreseeable future the financial support of the child is an important consideration in this case. The child is five years old. The wife has his primary care, which will remain for the foreseeable future. An insight into the husband's make up is provided by the husband. There is evidence before the Court from the husband that although he has "A stash of cash" he has steadfastly refused to pay the court ordered maintenance for the child G.
30. The wife has a need for accommodation for the child and herself. During the marriage their standard of living was not lavish but was comfortable. The husband has steadfastly refused to assist with the child's maintenance. Currently he is in arrears of maintenance. In the Court's judgment the husband is likely to continue is recalcitrant behaviour. It is vital that the wife has a reasonable and comfortable home in which to accommodate her housing needs and in which the child can grow up. In the circumstances the Court orders that the husband pay to the wife \$175,000.00 within two months. This sum will provide the wife with enough funds to make a deposit on a modest home. If the husband refuses to pay the property should be sold and the wife's award be paid out of the net equity. The wife should be jointly responsible for the conduct of the sale of the property. The husband's accommodation needs are clearly met by the interest he has in his grandmother's property.

31. It is not unreasonable to expect that the husband can meet this payment without any difficulty. The Court reiterates the husband's evidence that he has a "Stash of Cash".
32. As regards the maintenance of the child the wife puts forward a budget of \$1598.75 for "G's" direct expenses. She attributes 40% or \$842.19 of her budget of \$4,210.93 as "G's" indirect expenses. The Court orders that the husbands pay \$1200 monthly towards "G's" maintenance, the payments are to commence on 1st September 2013.
33. The husband's actions have significantly increased the wife's cost in this matter. Therefore, he should bear the wife's costs of these proceedings to be agreed or taxed.

Addendum

34. The Court has been informed that the mortgage is several months in arrears and the bank is in the process of foreclosing and proposes to sell the property. It is hereby by ordered if the bank proceeds with the sale of the property any remaining equity should be paid into Court with a view of the wife's award being settled out of the funds paid into Court. Liberty to apply.

Dated August 7, 2013

Justice Wade-Miller, PJ