



# In The Supreme Court of Bermuda

**DIVORCE JURISDICTION**

**2012 No. 72**

**BETWEEN:**

**M. M.**

**Petitioner**

**-AND-**

**A. M.**

**Respondent**

Date of Hearing: July 5, 2013

Date Judgement Circulated/Delivered on July 19, 2013

MacLellan & Associates - Jackie MacLellan - for the Petitioner  
In Person - for the Respondent

1. This decision deals with a husband's application for variation of a consent maintenance order for the wife, an issue of outstanding arrears and a contempt of Court summons.

### Background

2. The spouses are both from the Azores. They were married in the Azores on the 2<sup>nd</sup> August 1980 Decree Nisi was granted on the 26th day of October, 2012. To date it has not been made absolute.

There are two children of the family a boy born in 1984 who is now 29 years old and working and a girl born in 1996 now 17 years old and attends school. She lives with her father.

3. Co-habitation ceased in 2011 when the wife Petitioner vacated the matrimonial home and moved into an apartment. She said she did this because of the husband's association with other women. She asserts that the husband's unreasonable behavior caused her to suffer from high blood pressure and extreme stress and anxiety. I accept and find as a fact that the husband has had at least two improper associations as he accepted in the face of the court that during the marriage he has had illicit affairs and he is presently in a relationship with another woman with whom he fathered a child who is now about four years of age. The woman is now pregnant with a second child and he wants to marry her.
4. In 1986 the parties moved to Bermuda. The wife did not finish high school nor has she any post secondary education. After moving to Bermuda she worked as a cleaner during the day and pot washer during the evening. She deposited all her earnings into the husband's account as he felt it was in-appropriate for her to have her own account.
5. In 1990 the parties separated as the wife discovered that he was having an in-appropriate relationship with another woman. In 1992 they reconciled their difference. From 1992 to 1996 the wife worked at the Portuguese Bakery. She became pregnant with their daughter and then worked as a babysitter in their home. In 1997 she worked for one Mr. Petty as a housekeeper and a caregiver. She did not receive a pay check as the husband made arrangements with Mr. Petty for her pay check to be deposited into his account. I

accept the wife's evidence that Mr. Petty deposited her pay check into the husband's account, which was in his sole name.

6. The Court accepts and find as a fact that in 2005 Mr. Petty ended the work relationship with the wife. The wife was offered another job, but the husband wanted her to stay home and look after the children.
7. The wife relied completely on the husband for financial support as he had total control over the finances.
8. In 2008 the wife's mother and father who lived in the Azores died. The husband went to the Azores to deal with the wife's parent's estate. The wife gave him a power of attorney so that he could deal with the estate. The wife said that she later found out that the husband placed £21,728 from her parent's estate into his personal account. This amount has now been repaid to the wife.

9. Income Position

The wife has no income since she stopped working in 2005. All her earnings throughout the marriage were deposited into the Respondent's account. She has no access to the monies that they earned. The wife said that due to her medical issues she is unable to return to work. The wife does not know what the Respondent earns as the Respondent has always kept that information from her.

10. The parties own jointly a house in the Azores and one in the United States. Additionally the Respondent owns jointly a house with his three sisters in the Azores. Apparently, the Respondent's girlfriend lives with their son in that accommodation.
11. The Respondent bought a house in Bermuda in the name of Mr. Petty as at the time of purchase he did not have his PRC Certificate. The home was purchased for \$400,000. The parties lived in the home since 2000. The Respondent spent about \$400,000 renovating the property. Mr. Petty became the subject of some lawsuits and it would seem the creditors are looking to claim the equity in the house to defray his indebtedness.
12. The Respondent has a pension; he has retained the family car.

13. The wife gives her monthly expenses as \$5,230.00. Since the wife has left the matrimonial home the Respondent has paid her rent in the amount of \$2,300.00 monthly and at times paid her electricity bill of \$300 monthly and telephone bill of \$100 monthly.
14. On the 8<sup>th</sup> day of February 2013 while the husband was still represented by Counsel the parties agreed a consent order to pay the wife \$ 4,750.00 monthly. Presently the husband is in arrears in the amount of \$ 22,467.86.
15. In paragraph 32 of his affidavit sworn on the 10<sup>th</sup> of July 2013 the husband accepted that his is a 40% shareholder of a limited liability company known as Island Home Landscaping; the revenue earned by the business is treated as his own. He said for the sake of clarity the revenue is used to pay for all of the families' expenses. His personal net income is \$616.07 per week. He has never received any dividends from the business. He does not pay rent. His personal monthly expenses are \$2706.00 and for their daughter \$585.

16. Court

I have assessed the assets and the general income position of the parties. The wife who is 54 years old has no independent income position. She has not worked since 2005. Prior to 2005 she worked as a house cleaner and baby sitter. I accept her evidence that her husband did not want her to work after the Petty's residence. All her financial needs have been met by the husband. She has no personal savings even when she worked her earnings was placed in the husband's account.

17. I agree with the husband that since he is taking care of their daughter's financial needs and she resides with him there is no need for the wife to reside in a two bedroom house therefore in adjusting her needs I reduce the sum payable for rent to \$1700 monthly which is sufficient to have a one bedroom apartment. Also I reduce the other monthly expenses as follows – the sum of \$1,080 payable for food and cigarettes to \$500, clothing \$150, entertainment of \$500 monthly is reduced to \$300 monthly, hairdresser to \$150, and electricity \$200. Therefore her monthly budget is reduced accordingly.

18. The husband has said since the economic downturn the standard of living enjoyed by the wife during the marriage has changed substantially. This court has had regard to all the circumstances of the case. In any variation application this court is obliged to look at the matter as it presently stands and make an order that is reasonable in the circumstances. It is obvious that the economic downturn will decrease the husband's income. However, he has convinced himself that he should have no further responsibility for the wife – that is not the law.
19. While after a marriage breaks down it is desirable that there is a clean break and the parties are allowed to get on with their respective lives as so often happens in the big money cases. When resources are limited and the circumstances of the case warrant continuous periodical payments to a spouse then a clean break is not possible. This is one such case. Accordingly, I reduce the wife's periodical payments to \$3,500 per month with effect from the 1<sup>st</sup> August 2013. The wife must in due time seek employment wherever she can to supplement this sum.
20. The husband is to pay the wife's costs of the applications to be agreed or taxed.
21. The wife or other appointed representative has joint conduct of the sale of the property in New Bedford USA. The arrears of maintenance is to be paid from the net proceeds of the sale. The balance of the proceeds is to be paid into Court until the legal fees are assessed and paid.
22. The house in the Azores is to be transferred to the wife after September 15, 2013. The parties have liberty to apply.
23. The Respondent shall surrender his passport and all travel documents to the Court before 4:30 p.m. today 19<sup>th</sup> July 2013. If he fails to do so a warrant for his arrest is attached to this order. The passport shall not be released to the Respondent until the Respondent has made reasonable provisions in complying with the terms of this court order. The Decree Absolute shall not be granted until the Respondent has made reasonable progress in complying with the provision of this court order and it has been complied with.

24. Because of the husband's lack of candor as to his true earnings and his ability to take on another family I am satisfied that he should be able to afford this sum.

Dated August 8, 2013

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Justice Wade-Miller-PJ