



**IN THE SUPREME COURT OF BERMUDA  
CIVIL JURISDICTION  
2009 : No. 213**

**BETWEEN:**

**S**

Petitioner

**-and-**

**S**

Respondent

**-and-**

**RCL**

Co-Respondent

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**DECISION**

1. This is an application by the mother for variation of the maintenance orders made on the 16<sup>th</sup> December 2010 and 22<sup>nd</sup> March 2011 for their children.
2. The parties were married on the 12<sup>th</sup> April 2003. They have two young children born of the marriage. They were divorced on the 16<sup>th</sup> March 2010. Provision was made in orders dated the 16<sup>th</sup> March 2010 and the 22<sup>nd</sup> March 2011 that the mother and father were to divide equally the school fees of the children which was \$1590 for each child monthly and, the mortgage (\$1250 each month) on the matrimonial home and holiday expenses.
3. On the 16<sup>th</sup> November, 2011 the mother was granted leave to remove the children from the jurisdiction to allow her to accept a two year secondment as a treaty advisor to work with OECD in Paris.
4. Before her departure and subsequently the mother and the father tried to agree an amount for the maintenance of the two children but they failed in their effort to do so. Since their departure the father has only contributed \$900 dollars towards the maintenance of the children. **Mother is seeking immediate relief backdated to November 2011.**
5. Since 2008 the mother has been employed by the Ministry of Finance. She earns \$10,172.06 gross monthly less \$2,102 monthly deductions. Her net salary after deductions is \$8,065.06 per month. The mother is now a resident in France. She has informed the court because there is no double tax treaty between Bermuda and France as a resident in

France she is obligated to pay income tax (41% of her salary). Additionally, she continues to pay Bermuda's tax and this creates a substantial financial burden as she is unable to meet the expenses for the children and the household. Mother says that she when she was making her plans to relocate to France she wasn't aware of that she had to pay tax in France.

6. I should state it early that I do not find mother to be credible. She is a Treaty Advisor and I do not believe her when she said that she was unaware of her obligation to pay income tax in France. Even if it were true that she was unaware of the obligation in my view the mother would have only herself to blame for the predicament in which she finds herself. With minimum investigation and with asking the simplest and most obvious question this information could have been ascertained. That said, the welfare of the two children is the paramount consideration, and I must look at the needs of the children, the income, liabilities and the inescapable expenses of the parents in order to access the level of support each can provide.
7. In paragraph 17 of her affidavit sworn on the 2<sup>nd</sup> May 2012 the mother states that her monthly household expenses totals US\$6,037.06. Given that her net monthly income after tax is \$4,758.08 she has a shortfall of \$1,283.93 each month before even having to pay the direct expenses for the children. She was able to meet these expenses because her parents who have now returned to Canada have been paying for the groceries (\$1200 monthly) since they moved to Paris. She repays this money back to her parents when she can.
8. In paragraph 24 of her 2<sup>nd</sup> May 2012 affidavit mother states that her total monthly expense for the children exclusive her personal expenses is \$10,026.54 (inclusive of those expenses which she cannot currently afford).
9. In paragraph 18 of her affidavit mothers sets out the children's monthly expenses, which she is able to afford as US\$1,887.37 and those expenses she is unable to afford as US\$2,102.11. One of the items she cannot afford is \$970 monthly for afterschool care and Wednesday care. She states that children in France do not attend school on Wednesdays and this constitutes the cost of alternate care. This court is unable to reconcile this claim with the claim for babysitting and housekeeping as there seem to be some overlap here. This figure does not include any travel or vacation expenses for the children as she cannot afford it. She approximates the cost of one return ticket from Paris to Bermuda as US\$1200. It will cost \$7,200 if the children where to visit Bermuda three times. Mother says that she has an additional \$1,150 personal expense.
10. Counsel for the mother submits, that given her current level of income it would be reasonable for them to be equally responsible as to one half each of the direct/household expenses which would be \$3,504.74 each. When they were in Bermuda the father was effectively paying \$3,100 for the maintenance of the children. He paid half (\$1, 250.00) of the mortgage secured against the property and half (\$1890.00) of the school fees. She believes the father is in a better position now as he no longer has to pay the mortgage.

11. I reject the Petitioner's claim that father earns \$7,457 per month. I accept the fathers evidence that he is employed as a graphic designer with an income of \$5,241.00 plus \$750 net monthly as a night security officer.
12. In paragraph 26 of his affidavit of 7<sup>th</sup> May 2012 the father refers to pages 44 – 45 of the exhibits to his affidavit where he sets out a statement of his earnings, expenses and debts. He states that his basic monthly expense is \$4,131.00; his annual expense is \$195.92 and his average monthly expense during access is \$331.00. His monthly expense includes voluntary monthly maintenance, repayment of legal and school fees – his debts total \$93,234.00. He says it is clear from his statement of earnings, expenses and debts that he is unable to afford to contribute more than he does without compromising his ability to visit and provide for their children during his times of access.
13. The father states that he has always paid the children's GEHI health insurance coverage however the children now have double insurance coverage since mother has put them on her policy starting January 2012; consequently she has lowered her income by some \$214.00 per month as a result of her inclusion of the children under her GEHI Insurance Policy without any reference to him.
14. Father attacks the mother's household budget which he says he has only just received. He submits '*interalia*' that mother lives in the most expensive part of Paris. She has a housekeeper which cost \$129.00 per month. In her Affidavit mother states the household expenses as US\$6,037.00 monthly. She indicates that she is only able to meet these expenses as her parents have been paying for groceries of US\$1,200.00 monthly since they moved to Paris. Additionally, without their financial assistance she would not be able to meet the monthly household expenses, which includes US\$129.00 monthly for a housekeeper and US\$300.00 monthly for unforeseen and one off expenses. It would seem to this court that some items on the household budget need justification. For example, the budget if \$1200.00 per month for food was to feed a household (with three adults and two children) when the parents resided with them. If it is contemplated that the parents will leave Paris in June then the food requirement would be less and in any event an apportionment would need to be made as to how much of this sum is attributable to the two children.
15. Counsel for the wife attacked the husband's evidence of his earnings and budget, she maintains that he lives with his girlfriend, the co-respondent, and her three children and the girlfriend earns \$3,712.00 monthly. She receives \$4,280.00 child maintenance from the father of her children over the past 12 months. This calculates to \$356.67 per month. Mrs. Marshall questioned – what effort is she making to obtain more money. The arrangement the husband has with the co-respondent is not reasonable in light of his primary obligation to his children. If one looks at her contribution she should be contributing another \$1,000.00. She is left with another \$2,264.00 in her hands. Mother in seeking an amount

of \$2,800.00 back dated to November 2011, towards the maintenance of the children. If one looks at what the father contributes he pays less than 1/6 percent of their expenses. Mother seeks the cost of the application.

16. Both parents have a responsibility to support their children financially. The parent with custody of the children has to take care of them and look after their day-to-day needs. The parent who does not have custody usually has to pay money to the parent with custody to help cover the costs of taking care of the children.
17. What are the reasonable requirements of the children? What is each parent's capacity to provide financial support? I have had regard to the list of expenses, which the mother sets out in her Affidavit. Given the parents financial constraints the Court rejects some items as being unreasonable unrealistic expectation. I have in mind some of the monthly expenses under the head "expenses I am currently unable to afford.— holiday camp \$170.00 monthly, after school and Wednesday care, babysitting \$64.00 per month, swimming lesson, music lesson, ballet lesson and climbing.
18. I accept the evidence of the father that although he was unable to afford the maintenance ordered by the court from his earnings he incurred significant debt due partly to having met his share of the expenses for the children while they resided in Bermuda in an effort to comply with the court's order. Additionally, before he began representing himself, he incurred significant legal fees, which he is paying on a monthly basis. Currently, he owes \$93,000 a portion of this amount is in relation the school fees of the children which he incurred while they were residing and attending school in Bermuda.
19. The father complains that it was sometime after the mother relocated to Paris with the children that she began to assert that she was obligated to pay tax in France.
20. The mother did not produce clear evidence to show that she was obligated to pay French tax and in my judgment based on the history between these two individuals father was justified in refusing to accept her assertion. Nevertheless, \$300.00 per month which the father pays voluntarily for the maintenance of the two children is a paltry sum and woefully inadequate. On the other hand, this court has some lingering concerns regarding the mother's list of direct and indirect expenses. In these circumstances the court is prepared to make an interim maintenance order while the mother is given an opportunity to provide documentary evidence in support of her claim.
21. Given these factors it is hereby ordered that mother provide documentary evidence to support her purported expenses as follows:
  1. The prorated income tax paid to the French Government in April 2012.

2. A letter from the relevant Bermuda Government Department verifying that she does not receive any assistance under a separate arrangement to help her defray any French tax obligation.
  3. Her lease agreement stating the amount paid for rent.  
Usually, in countries where there is a heavy tax burden the Government provides some benefit to the tax payer.
  4. This court would like mother to indicate what benefits are available to the tax payer particularly for children.
  5. The Registrar is to write to Mrs. Charles, the Court Social Worker providing her with a copy of this order and to enlist her assistance to help provide the court with independent verification of these matters. The court will review this matter on the – day of February 2013. Mother is to file her affidavit exhibiting the documentary proof on or before 31 day of January 2013.
  6. Father is to file an affidavit on or before the 31<sup>st</sup> of January 2013 verifying his income by letters from his full and part-time employers. Additionally, he is to provide the court with documentary proof of the inescapable expenses of the entire amount he claims that he spends on the children when they are in his care.
- 22 In the meantime taking into account all factors the court accepts and I hereby order father to pay maintenance in the sum of \$1,400 monthly backdated to commence, June 2012.
23. The Cost of these proceeding is reserved.

Dated 29<sup>th</sup> October 2012

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JUSTICE WADE-MILLER, PJ