

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
FAMILY DIVISION  
BETWEEN**

**2020  
FAM/DIV/00174**

**WS**

**Petitioner**

**AND**

**KS**

**Respondent**

**Before:** The Honourable Madam Justice J. Denise Lewis-Johnson  
**Appearances:** Terrell Butler for the Petitioner  
Elliott Lockhart K.C. for the Respondent  
**Hearing Date:** 19 May 2022

**RULING**

**LEWIS-JOHNSON, J:**

**Introduction**

1. A Decree Nisi was granted on 17 November 2020 on the ground that the Respondent has since the celebration of the marriage treated the Petitioner with cruelty.
2. On 17 June 2021, the Petitioner filed a Notice of Intention to Proceed with Ancillary Relief. The issue to be determined is maintenance for the minor children of the marriage. There are four children of the marriage ages 13, 12, 10 and 5 child and a child of the family who is now 17 years of age.
3. The Petitioner seeks an Order for maintenance payments in the amount of \$1,000.00 per month for the minor children, to be paid until the youngest child attains the age of 18 or completes tertiary education, whichever is the latest. The Respondent, however, requested maintenance payments in the amount of \$2,000.00 per month.

### **The Petitioner's Evidence**

4. The Petitioner's evidence is contained in his Affidavit of Means filed 17 June 2021. The Petitioner resides in Abaco, The Bahamas and is employed as a Shop Supervisor. His monthly salary is \$4,596.02.
5. He currently lives rent free in a trailer provided by his employer however, he claims that he was instructed to find alternative accommodation at his own expense. According to the Petitioner, the projected expense for accommodation ranges between \$850.00 to \$950.00 for a one bedroom or \$1,500.00 to \$1,800.00 for a two bedroom. The Petitioner also led evidence that his projected range of expenses for accommodation and utilities is \$1,240.00 to \$2,240.00.
6. Further, he states that he expends monthly \$574.20 on loan payments and \$500.00 towards groceries.
7. The Petitioner currently pays \$1,000.00 per month toward maintenance of the four minor children of the marriage. He states that he purchases gifts and other items for them. The Petitioner's evidence is that he is not prepared to assume financial responsibility of the Respondent's child prior to marriage as that child would be maintained by the biological father and other family members.
8. The Petitioner lists his total monthly expenses at \$3,924.00. This results in an excess of \$672.02 at the Petitioner's disposal. However, once alternative accommodation is found, this is likely to change.

### **The Respondent's evidence**

9. The Respondent's evidence is contained in her Affidavit of Means filed 27 October 2021. She is employed by the Mailboat Company Limited as an Accounts Supervisor and earns an average monthly salary of \$1,600.00.
10. She resides in rental accommodations at New Bight Cat Island, The Bahamas. Her monthly expenses inclusive of rent is listed at \$4,455.00.
11. The Respondent also owns a duplex in the Central Pines Estates Subdivision on Abaco, The Bahamas with a monthly rental income of \$2,450.00.
12. The Respondent states that her average monthly shortfall for maintenance for herself and the minor children is between \$850.00 and \$1,000.00.

## Law

13. The custody of minor children in divorce proceedings is governed by **Section 74** of the **Matrimonial Causes Act**, which requires the court to consider the welfare of the children. **Section 3 of The Child Protection Act** also provides guidelines for the court to consider when determining custody of minor children, these considerations include, the wishes and feelings of the child, the child's physical, emotional and educational needs, the likely effects of any changes in his circumstances, his age, sex, background and any harm that he has suffered or is at risk of suffering; and the capacity of the child's parents, guardians or other persons involved in caring for and meeting their needs.
14. When determining maintenance for the children of the marriage the Court is guided by the considerations set out at **Section 29(2) of the Matrimonial Causes Act Chapter 125, Statute Laws of The Bahamas** which provides:

**“(2) Without prejudice to subsection (3) it shall be the duty of the court in deciding whether to exercise its powers under section 27(1) (d), (e) or (f), (2) or (4) or 28 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that it to say —**

- (a) the financial needs of the child;**
- (b) the income, earning capacity (if any), property and other financial resources of the child;**
- (c) any physical or mental disability of the child;**
- (d) the standard of living enjoyed by the family before the breakdown of the marriage;**
- (e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;**

**and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1) just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.”**

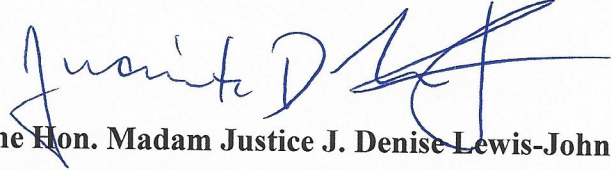
## Decision

15. The sole issue before the court is maintenance for the minor children. I have reviewed the Affidavits and heard the evidence of both Parties and note that Counsels provided no submissions or authorities.

16. In matters relating to the custody and maintenance of minor children the paramount consideration of the Court is the welfare of the children and what is in their best interest.
17. I am guided by Section 29 (2) of the MCA which lists the factors to be considered when determining whether the payment of periodical sums to a child is appropriate.
18. Having considered the evidence of both parties, I accept the evidence of the Petitioner. I find the Respondent was less than forthcoming having listed her monthly expenses at \$4,455.00 which is inclusive of \$340.00 for the children's school lunch. However, the Court is aware that the children receive lunch from the National Lunch Program which provides free meals to public school students. Accordingly, the Respondent suffers no expense in this regard. Additionally, the Respondent stated that she takes on extra jobs but never listed the funds she receives.
19. Considering that the Petitioner will have to find alternative accommodation, a median figure of \$1,650.00 was used as an estimate for a two-bedroom apartment.
20. It is common in matters such as these for both parties to over-state their expenses resulting in a deficit. The court also has to consider the demeanor of the witnesses as they gave their evidence, the actual financial capabilities of the parties, the needs and welfare of the children, the evidence before the court and the applicable law in coming to a decision.
21. Having regard for all the circumstances of this case, the Court Orders as follows:
  - i. The parties are to have joint custody of the minor children of the marriage, with primary care custody and control to the Respondent and liberal access to the Petitioner;
  - ii. The Petitioner is to pay to the Respondent the sum of \$1,500.00 monthly towards the maintenance of the said children, on or before the 28<sup>th</sup> day of each month commencing on the 28 December 2022 and continuing until the last child attains the age of 18 or completes tertiary education whichever is latest;
  - iii. The parties are to share equally the medical, dental, optical, and education expenses of each child until they attain the age of eighteen years or complete tertiary education, whichever is later;
  - iv. The parties have liberty to apply;
  - v. Each party to bear their own cost.

22. This Court declares that it is satisfied that pursuant to Section 73 (1) (b) of the Matrimonial Causes Act that arrangements have been made for the welfare of the said children and are the best that can be derived in the circumstances.

Dated this 1<sup>st</sup> day of December 2022

A handwritten signature in blue ink, appearing to read "Justice D. Lewis-Johnson", written over the printed name below.

**The Hon. Madam Justice J. Denise Lewis-Johnson**