

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division

FAM/div/00555

BETWEEN

LORINDA MAE WOODSIDE

Petitioner

AND

AARON ARRINGTON WOODSIDE

Respondent

JUDGEMENT

Before: The Hon. Madam Justice J. Denise Lewis-Johnson

Appearances: Mr. E. Raphael Moxey, Counsel for the Respondent
Mrs. Cathleen Hassan, Counsel for the Petitioner

Hearing Dates: 30 June 2022; 24 May 2023

Family Law-Variation of Consent Order-Objection to Variation Application-Consent order unilaterally breached- Application brought after contempt--Minor child obtains the majority age-Tertiary Education- Matrimonial Causes Act Section 35 -Whether conditions for granting variation met

Introduction

1. By Summons and Affidavit filed 18 August 2021 and 20 July 2022 respectively; the Respondent sought to vary a Consent Order “the Order” filed 23 July 2020.

2. By Affidavits filed 29 June 2022 and 3 August 2022 the Petitioner objected to the application.

The Evidence

Aaron Woodside

1. The Respondent avers that on or about 10 August 2021, the minor child “the child” commenced tertiary education. He further states the child was no longer living day to day with the Petitioner and therefore she no longer incurred daily living expenses. As a result, he wishes to cease maintenance payment of \$400.00 per month.
2. The Respondent stated that his last and final payment towards the maintenance of the child was in August of 2021 and avers that he and the Petitioner prior to making this application agreed to the variation.
3. The Respondent maintains that he is not in breach of the Order and that he has given the child freedom to charge incidentals or purchases with his credit card at her leisure. He further avers that at the beginning of each semester he provides the child with \$1,500.00 cash although all of the other expenses are paid.

Lorinda Mae Woodside

4. The Petitioner avers that the Consent Order made provisions for the Respondent to pay the sum of \$400.00 per month towards the daily living expenses of the minor child until she completes tertiary education, and the parties shall be equally responsible for educational expenses of the child.
5. She claims that immediately after the child turned 18, the Respondent ceased advancing maintenance payments despite being reminded of the obligation on many occasions. She alleges that she never agreed to a variation of the Order.
6. The Petitioner avers that in preparation for the child’s transition to tertiary education as a full-time student combined with an annual vacation, she spent a total of \$8,308.87. The Respondent provided \$2,138.98, owing her the sum of \$2,015.46 to which she has presented receipts to the Respondent. She further avers that the

Respondent between 2020 and June 2021 has only advanced the sum of \$900.00 towards the clothing allowance for the child and decline to assist with travel and accommodations.

7. The Petitioner stated there are occasions when the Respondent would simply refuse to assist when the child request assistance placing a strain on her while managing health challenges and that the child does not have direct access to the Respondent's bank account, but a copy of his credit card.
8. She claims that other than tuition, there are no other charges, as the child only purchases necessities, and she leaves cash with the child in the event of emergencies.

The issue

9. The issue to be determined by this Court is whether a variation should be granted to the Respondent.

The Law

10. The Matrimonial Causes Act Chapter 125 statute laws of the Commonwealth of The Bahamas "The Act" by Section 35 provides:

"35. (1) Where the court has made an order to which this section applies, then, subject to the provisions of this section, the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) This section applies to the following orders, that is to say —

(a) any order for maintenance pending suit and any interim order for maintenance;

(b) any periodical payments order;

(c) any secured periodical payments order;

(d) any order made by virtue of section 27(3)(c) or 31(7)(b) (provision for payment of a lump sum by instalments);

(e) any order for a settlement of property under section 28(1)(b) or for a variation of settlement under section 28(1)(c) or (d) being an order made on or after the grant of a decree of judicial separation;

(f) any order made under section 25(3) for the sale of property.

(7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates and, where the party against whom that order was made has died, the changed circumstances resulting from his or her death.

Decision

11. The Courts when granting a variation of an Order, must adhere to statutory guidelines while having regard to the circumstances of the case. The Respondent must demonstrate that *there has been a change in any of the matters to which the Court is required to have regard when making the order to which the application relates.*

12. The Order stated inter alia:-

a. “The Respondent shall pay to the Petitioner the sum of \$400.00 per month towards the daily living expenses of the minor child until she shall complete tertiary education;

b. The Respondent shall be equally responsible for the educational expenses inclusive of all extracurricular activities, extra classes, uniforms, tuition, mandatory educational conferences, books, other school supplies, vacations and any other expenses associated with the same of both children of the marriage namely Lauren Alysa Woodside (f) born on the 2nd day of September, A.D., 1995 and Erin Tyler Anya Woodside (f) born on the 22nd day of July. A.D., 2023 until each shall have completed tertiary education.

c. The Respondent shall pay to the Petitioner the sum of \$300.00 in June and November of each year towards the clothing expenses for the minor child of the marriage until she has completed secondary education or attain the age of 18 years, whichever is later.....”

13. The Petitioner relied on the *case of KNN v SDN BS 2015 SC 103* where Bain J reaffirmed the position relating to Variation of Consent Orders, to which this Court agrees. stating.

“Failing a drastic change in the circumstance of either party to a Consent Order, it is trite law that consent orders are not to be varied by the

court. The cases of *Wilkins v. Wilkins* [1969] 1 WLR 922 and *Wong v. Wong* [2006] 2 BHSJ No. 151 stress that such change in circumstances must be so substantial and material, that it moves the court to vary the Consent Order.”

14. The Respondent made the application to vary the Order when the child commenced tertiary education. While the child is currently living abroad, the Respondent must appreciate the continuing personal needs which the child has and these needs ought not to be neglected.
15. Having heard the evidence, the Court is satisfied that the Respondent unilaterally stopped maintaining the child with no agreement from the Petitioner.
16. The Respondent despite his belief that the maintenance payments were being utilized as alimony for the Petitioner, led no evidence to support this belief. He willfully and solely breached the terms of the Consent Order 2020 and June 2021.
17. The Court finds that the Respondent was intentional in his act of failing to maintain the child post August 2021 and ought to have made this application before ceasing any obligations existing under the Order. The approval to vary ought to have been sought prior to the Respondent ceasing payments. The Court has regard for the basic maxims of equity, in that *“he who comes for relief must come with clean hands”*.
18. Further, the Respondent has failed to satisfy this Court of the statutory test which would move the Court to vary the conditions of the Order. The Respondent has not shown that there was a significant change in his circumstances or that there was a change or changes in matters that the Court was required to have regard for when making the Order. He simply wishes not to contribute \$400.00 maintenance to the Petitioner for the child.
19. In *D.B.F and F.S.F Evans* J opined:-

“The change if any in the circumstances of the parties as stated earlier is important because the basis and intended effect of the original order are

relevant factors to which The Court on variation should pay regard...embodied in a consent order.”

20. The Court is of the view that while the child attends university and does not reside with the Petitioner on a consistent basis, her maintenance needs remain. These include but are not limited to clothing, food, cleaning supplies, hygiene needs and travel expenses. The Petitioner has been forced to take on the primary role of maintaining the child due to the Respondent's actions.
21. While the Respondent does not want to provide the maintenance payments to the Petitioner, the Court accepts the evidence of the Petitioner that the Respondent is not meeting the financial obligations and needs of the child. The Court accepts that the Petitioner is carrying a large part of the maintenance needs of the child.
22. For all of the reasons stated above and in all the circumstances of the case, the Court having heard the evidence of the parties, taken note of their demeanor, and having considered the relevant law finds as follows:-
- i. The Respondent's Application to vary the Consent Order dated 30th January 2020 be dismissed.
 - ii. The Respondent shall pay to the Petitioner the sum of \$400.00 for each month he ceased to pay the required maintenance.
 - iii. The terms of the Consent Order remains in effect and as such, the Respondent is to continue the maintenance payments until the completion of tertiary education or reaches the age of 23.
 - iv. Cost of this application to the Petitioner to be taxed if not agreed.

Dated this day of September 2023


The Hon. Madame Justice J. Denise Lewis-Johnson