

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Family Division  
2022/FAM/div/FP/00052**

**BETWEEN**

**RG (nee E)**

**Petitioner**

**AND**

**LG**

**Respondent**

**BEFORE:** The Honourable Justice Petra M. Hanna-Adderley  
**APPEARANCES:** Mrs. Cassietta McIntosh-Pelecanos for the Petitioner  
Miss Constance McDonald KC for the Respondent  
**Hearing date:** August 23, 2023

**DECISION**

**Hanna-Adderley, J**

This is an application for Ancillary Relief.

**Introduction**

1. By a Notice of Intention to Proceed with Ancillary Matters filed on September 13, 2022 the Petitioner seeks an Order that the marriage between the parties be dissolved, that there be a declaration pursuant to Section 73 of the Matrimonial Causes Act ("**the Act**") and an order that each party pay their own costs.
2. The Petitioner's application as supported by her Affidavit of Means' filed August 21, 2022, her Supplemental Affidavit of Means filed November 25, 2022, an Affidavit filed on June 21, 2023, and an Affidavit filed August 21, 2023. The Respondent filed an Affidavit of Means in Response on April 14, 2023.
3. On December 6, 2022, Justice Ntshonda Tynes made diverse orders in relation to the children of the marriage, LG born on February 25, 2008 and LG, Jr. born on March 19, 2012. The application was adjourned for the determination of two- issues, a final Order

in respect of the maintenance payment by the Respondent for the children and the payment of the school fees for the children. The Court is now being asked to deal with the payment of arrears of maintenance by the Respondent and the determination of an additional issue, defining the Respondents access to LG. The Respondent's access to LG, Jr. was defined at the hearing on August 23, 2023.

## **Statement of Facts**

### **Petitioner**

4. The following has been gleaned from the Affidavits filed herein and the oral evidence of the parties. There was no cross-examination.

### **Maintenance arrears of Maintenance and School Fees.**

5. The Petitioner is employed as an Accountant at \*\*\* with a gross monthly income of \$3,230.00. Her monthly expenses of rent, groceries, light bill, children's lunch, snacks, medical, dental and vision, afternoon classes, hair maintenance, vitamins, health hair products, loan, credit cards, gas, cellphone, Netflix and security monitor, total \$3,492.00; quarterly expenses, school fees and service of the vehicle total \$2,250.00; bi-annual expenses for clothes, dental and medical total the sum of \$3,300.00 and yearly expenses for school uniforms, school registration, books, school supplies, vision, vehicle license, vehicle insurance, vacation and extracurricular activities total the sum of \$8,595.00.
6. The Respondent had not paid any maintenance for the children since the parties' separation in 2018. That he gives the parties' son lunch money. That since the Order on December 6, 2022, was made the Respondent has paid a total sum of \$800.00 in maintenance. He is in arrears of maintenance and clothes allowance in the sum of \$2,450.00.
7. That the parties agreed that the Respondent would pay the school fees for the parties' daughter and the Petitioner for the son. That since April 22 the Respondent had failed to pay the school fee as agreed. The Petitioner seeks reimbursement of the sums paid by the Petitioner for the daughter's school fees. That she requires assistance from the Respondent to maintain the children. She asks for \$800.00 per month for the maintenance of the children and for an Order that Petitioner pay the school fees for the parties' son and that the Respondent pays for the parties' daughter. The Petitioner has paid the school fees for both children for January 2023 to April 2023 and for April 2023 to June 2023, as well as now the fees for September to December 2023.

## **Respondent**

8. The Respondent is a Welder/Pipefitter employed with \*\*\* with a gross monthly salary of \$2,400.00. He was terminated from his job at the \*\*\*as of September 2021. He has asked the Petitioner to enroll the children in Government school but the Petitioner is not being reasonable or understanding of his situation having just obtained a job in December of 2022. That he had been unemployed from April 2022 to December 2022. Even while unemployed he tried to contribute to his children's schooling and maintenance.
9. The Respondent's monthly expenses consist of rent, electricity, cable, telephone, grocery, school lunches, gas, cellphone and miscellaneous expenses, all totaling \$2,037.00. He has yearly expenses such as car insurance and license and clothing totaling \$810.00. The Respondent also earns overtime. For the last 6 months the Respondent has earned \$1,732.51 or \$288.75 a month from overtime.

## **Access**

### **Petitioner**

10. The Petitioner's evidence is that due to a physical incident between the Respondent and LG she is very uncomfortable in the presence of the Respondent and she requests the intervention of the Department of Social Services before an order in respect of the Respondent's visitation to LG is made. That LG asked the Petitioner to obtain professional help for her as she was still traumatized by the incident. Dr. Pamela Mills has been providing care for her from January 2023 to date.
11. Dr. Mills provided a Report dated June 25, 2023, in which she outlines the Petitioner's concern about LG's anxious behavior and hours of isolation and depressive moods. She has diagnosed LG with Posttraumatic Stress Disorder and that according to LG initial symptoms emerged shortly after an encounter with her father who punished her corporally for visiting Port Lucaya. That although she has made great strides LG remained disinterested in rebuilding a relationship with her father. That she needed ongoing therapy.

### **Respondent**

12. The Respondent's evidence is that about 2 years ago he just happened to go to Port Lucaya and there he saw his daughter walking with a young boy. When she saw him she fled and hid from him. That he called the Petitioner who told him that she was at home. She told him that she had given their daughter permission to be at Port Lucaya and that

he needed to trust that. Further, he had given LG her lunch money of \$25.00. She "lied on" him and told the Petitioner that he had only give her \$10.00. When she visited him two weeks after the Port Lucaya incident he disciplined her for walking in Port Lucaya holding hands with a young boy and for lying on him by giving her 4 lashes across her bottom with a belt. That she did not suffer any bruises and that she stayed with him for the rest of the weekend. Subsequently, she seemed to have an excuse as to why she could not visit him. Eventually she stopped coming altogether. That he has not had access to her in 2 years. That the Petitioner subsequently dropped her to the skating rink unaccompanied by an adult. He is prepared to take her to these places if the Petitioner does not want to go.

13. The Petitioner denies leaving the child any of the said places unaccompanied by a adult.

### **Submissions**

#### **Petitioner**

14. Mrs. Cassietta McIntosh-Pelecanos Counsel for the Petitioner submits with respect to the issue of maintenance payments, that the Respondent can afford to pay \$500.00 per month for the maintenance of the children and pay half of the school fees for the children. That prior to the divorce they were paying the school fees when they were making less money. That the Petitioner will pay the higher school fees for their daughter.

15. Miss Constance McDonald KC, Counsel for the Respondent submitted that the Respondent is having difficulty paying the \$400.00 per month ordered by Justice Tynes. He has been trying to get extra work. That he had back payments when he started to work, that he could not pay his rent. He is just about caught up but he cannot afford to pay school fees for one child of the marriage.

16. Both Counsel agreed that the Department of Social Services should be directed by the Court to prepare a Social Inquiry Report in respect of the Respondent's access to the parties' daughter and with respect to determining whether the parties' son is happy with the current access arrangement with the Respondent.

#### **Issues**

17. The issues for determination by the Court are (1) Whether the Respondent can afford to pay \$500.00 per month as maintenance for the children on his income, (2) Whether the Respondent can afford to pay half of the school fees for the children on his income.

## **Analysis and Conclusions**

### **The Law**

18. Section 27 of the Act empowers the Court to make financial provisions for the children of the marriage by the parties to the marriage. Section 29 of the Act sets out the matters to which the Court is to have regard when deciding how to exercise its powers under Section 27 of the Act.

### **School fees, Maintenance and Arrears of Maintenance.**

19. The Petitioner who is employed as an Accountant at \*\*\* is determined that the children remain in private school. The Respondent who is a Welder/Pipefitter employed with \*\*\* is determined that they be enrolled in public school until he catches himself financially. Before the breakdown of the marriage the Respondent paid the school fees but he was working at the \*\*\* and making more money. I am of the view that to move the daughter at 15 to a government school would be detrimental. To move the son would be less detrimental because of his age. The Court could order that the son go to a government school and the daughter stay in the private school but in the long run that may result in some resentment on the part of the son as has been my experience.

20. Each parties' list of expenses are reasonable. This was accepted by the parties. At the end of the month the Petitioner makes a gross monthly salary of \$3,230.00. Her monthly expenses exceed her salary by \$262.00. However, she also has annual expenses totaling \$8,595.00, quarterly expenses of \$2,280.00 and bi-annual expenses of \$3,300.00. The Respondent takes home a gross monthly salary of \$2,400.00. He has a monthly surplus of \$400.00. However, he has yearly expenses of \$810.00. He can do side jobs and he is looking for additional outside work. He does make overtime and during the last 6 months he has earned on average \$288.75 per month on overtime. The Respondent has the ability to make extra money although the economy in Freeport is slow right now but, the Respondent has stated that he is almost caught up with his accumulated bills.

21. I am satisfied on the evidence that the Respondent should be afforded a little more time to steady himself financially after which he should be in a position to share the school fees. It would be detrimental to both children for different reasons to move them from the school that they have already started this academic year. I make the following final orders:

1. The Respondent shall pay to the Petitioner the sum of \$300.00 per month as maintenance for the children;
2. The Respondent shall pay an additional sum of \$100.00 per month towards the arrears of maintenance, clothing allowance and legal fees due to McIntosh & Co. until extinguished. Thereafter this sum shall be paid towards the maintenance of the children to the Petitioner;
3. Commencing the 2<sup>nd</sup> term or January 2024 the Respondent shall pay the school fee for LG,Jr. and the Petitioner shall pay the school fees for LG.
4. The Respondent shall pay the monthly school lunch fee for LG, Jr. and the Petitioner shall pay the school fee for LG.
5. There shall be no order made against the Respondent for reimbursement to the Petitioner for school fees for the current school term.
6. All other arrangements for the welfare of the children made on December 6,2022 by Justice Ntshonda Tynes (Ag.) shall remain in place and in force.
7. The parties shall have liberty to apply.

**Access to Lanayah Gittens**

22. The Respondent shall exercise supervised access to LG at the Department of Social Services once per week commencing the 1<sup>st</sup> week in November, 2023 after a preliminary assessment has been conducted of LG.
23. This matter is adjourned to December 13, 2023 at 12:00 noon for review.

Dated this 22<sup>nd</sup> day of September, A. D. 2023

**Petra Hanna-Adderley**  
**Justice**