

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Law Division**

2024/FAM/div/FP/00113

B E T W E E N

DRR

Petitioner

AND

CRP

Respondent

Before: The Honourable Justice Constance Delancy
Appearances: Shavanthi Griffin-Longe for the Petitioner
Cassietta McIntosh-Pelecanos for the Respondent
Hearing date(s): 14 and 21 February, 2025

RULING

Matrimonial Causes Act – Section 26 – Maintenance pending suit – The Applicant’s immediate financial needs – What is reasonable or fair - The Child Protection Act - Section 3 – Welfare of the child is paramount- Definition of welfare

DELANCY, J.

1. This is the Petitioner’s application for maintenance pending suit for her and the child of the family. The parties filed Affidavits and were both cross-examined on the contents thereof.

Background

2. The parties were married on 2 April, 2022 in Freeport, Grand Bahama.
3. The Petitioner, currently age 37 years, is a Teacher employed by the Ministry of Education and is a citizen of Portugal. The Respondent, currently age 42 years, is a physican employed by the Public Hospitals Authority and a citizen of The Philippines. At the date of application the parties were married for two and one-half (2 ½) years. The parties are the parents of one (1) child BCRP born 1 October, 2023.
4. The Petition was filed on 24 September, 2024 and an Amended Petition was filed on 3 October, 2024.
5. The Petitioner filed an Application for Maintenance Pending Suit and an Affidavit in Support thereof on 3 October, 2024. The Petitioner seeks the following:

1. That the Respondent do pay to the Petitioner maintenance by such monthly sum in respect of maintenance pending suit as may be just;
 2. That the Respondent do pay to the Petitioner such monthly sum in respect of maintenance for the child of the family BCRP as may be just.
 3. That the Respondent pay the cost of this application.
6. The Respondent filed a Memorandum of Appearance on 23 October, 2024 and an Answer and Cross Petition on 15 November, 2024.
7. The Petitioner filed a Reply and Answer on 3 December, 2024.

Issue

8. The issues to be determined by the Court are:
- i. whether to grant an order for maintenance for Petitioner pending suit, if yes, the amount of said maintenance; and
 - ii. whether to grant an order for maintenance for the child of the family pending suit, if yes, the amount of said maintenance.

Evidence

9. Both parties filed Affidavits and were cross-examined by Counsel for the respective parties.
10. The Petitioner's evidence is found in her Affidavits filed:
- i. 3 October, 2024;
 - ii. 20 December, 2024.
11. The Respondent's evidence is found in his Affidavits filed:
- i. 12 December, 2024;
 - ii. 28 January, 2025.
12. I read and considered the parties' affidavits, heard and evaluated the evidence of the parties under cross-examination and read the submissions of their respective Counsel. I summarize the facts relevant to the Petitioner's application for maintenance pending suit as follows:
- i. The Parties are the parents of a one (1) year old child.
 - ii. Parties have been married for less than three (3) years.
 - iii. The Petitioner is a teacher and earns a salary of \$27,300 per annum.
 - iv. The Respondent is a physican and earns a salary of \$50,000 per annum.
 - v. The parties resided at premises, which the Petitioner leased prior to the marriage, since the date of the marriage on 2 April, 2022 to 12 August, 2024.
 - vi. The Petitioner continues reside at the premises.
 - vii. The Respondent currently resides with a family member while his leased premises are made suitable for the child.
 - viii. The Respondent has access to medicine and medical care for the family as a part of his employment.
 - ix. Both parties contributed to the family and enjoyed a modest standard of living.

- x. The Petitioner seeks \$600 per month as maintenance.
 - xi. The Petitioner seeks a further \$700 for the maintenance of the child.
13. Counsel for the Petitioner contends that the law on maintenance pending suit is trite. That the Petitioner's request for maintenance should be granted on the basis that there is a financial disparity between the parties and the applicant's needs.
14. Counsel for the Respondent contends that the Petitioner has failed to present evidence to support her request for spousal support. The Petitioner is gainfully employed and still resides in the same accommodation she leased prior to the marriage which includes utilities. Further, the Petitioner has failed to make full and frank disclosure of her bank accounts. Counsel submits that the Petitioner's application for maintenance suit ought to be denied.

Law and Analysis

Maintenance for a spouse Pending Suit

15. Section 26 of the Matrimonial Causes Act gives the court power to make an order for maintenance pending the final determination of divorce proceedings. It provides:

On a petition for divorce, nullity of marriage or judicial separation, the court may make **an order for maintenance pending suit**, that is to say, **an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.** [Emphasis added].

16. The test for the granting of order under Section 26 is "as the Court thinks reasonable". It is intended to meet the needs of the applying spouse from the filing of the Petition to the granting of the Decree Absolute. The Court ought to focus on the immediate needs. The adjustment of the parties' financial position requires detailed examination of the evidence in ancillary relief applications after the granting a decree nisi. In **DB v FB** 1 FLR 390 *Moylan, J* at para.28 explained the purpose of Section 22 of the English **Matrimonial Causes Act 1973** (which mirrors Section 26 of the Bahamian **Matrimonial Causes Act**):

.... The purpose of this provision is clear as, for example, expressed in *The Family Court Practice* (Family Law, 2014) where it is said:

'The section is intended to address the immediate needs of a spouse by making income-based orders. Issues of capital or long-term expenditure are better dealt with at the final hearing.'

I would endorse, indeed emphasise, the word 'immediate'. The purpose of the section is to give the court the power to address income needs which cannot await the final resolution of the substantive claims either by agreement or court determination.

17. An order for maintenance pending suit maybe granted even though there is a fundamental question to be determined by the court in the proceedings, for example, the validity of the marriage. See the dicta of *Isaacs, JA* (as he then was) in **Fitzgerald v Fitzgerald** SCCivApp & CAIS No.74 of 2014.

18. In deciding what is "reasonable" or "fair" in this particular case the Court considered:

- (a) The earnings or earning capacity of the parties;
- (b) The outgoings of each party;
- (c) The needs including any special needs of the parties or the child of the family.

19. The Court is concerned with the current status quo. Issues related to long term expenditure ought dealt with at the ancillary stage post decree nisi as borne out Sections 27, 28 and 29 of the Matrimonial Causes Act.

20. In the circumstances, I find that the Petitioner has failed to demonstrate that there are any immediate financial needs that cannot wait for the final determination of these proceedings.

Maintenance for a child Pending Suit

21. The Petitioner seeks the sum of \$700 per month for the maintenance of the child of the family and a finding that the Order granted in the Magistrate’s Court is void ab inito.

22. The Court must be guided by the principle that the welfare of the child is paramount as stated in Section 3 of the Child Protection Act:

- (1) Whenever a determination has to be made with respect to —
 - (a) the upbringing of a child; or
 - (b) the administration of a child’s property or the application of any income arising from it, **the child’s welfare shall be the paramount consideration.**
- (2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the guiding principle mentioned in subsection (1) and that any delay in determining the question is likely to be prejudicial to the welfare of the child.
- (3) In determining any question relating to circumstances set out in paragraphs (a) and (b) of subsection (1), the court or any other person shall have regard in particular to —
 - (a) the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding;
 - (b) **the child’s physical, emotional and educational needs;**
 - (c) the likely effects of any changes in the child’s circumstances;
 - (d) **the child’s age, sex, background and any other circumstances relevant in the matter;**
 - (e) **any harm that the child has suffered or is at the risk of suffering;**
 - (f) where relevant, **the capacity of the child’s parents,** guardians or other persons **involved in the care of the child in meeting his or her needs.** [Emphasis added]

23. In **P v P and A** 2009/FAM/div/185 *Turner, J.* at para. 13 sought to define the word welfare in the context of the Child Protection Act, he stated:

The meaning of the word welfare is not defined by the Act, but I accepted the judicial definitions as provided by the House of Lords in **J v C** (1969) 1 All ER 788 where *Guest, J.* cited with approval the dicta of *Lindley, J.* in **Re McGrath (infants)** (1893) 1 Chancery 143 as follows:

The dominant matter for consideration of the Court is the welfare of the child. But the welfare of the child is not to be measured in money only, nor by physical comfort only. The word welfare must be taken in its widest

sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded.

24. An Order was granted in the Magistrate's Court on 26 September, 2024 approximately two (2) days after the filing of the Petition in these proceedings whereby each party has staying access to the child at one week intervals. The Court accepts Counsel for the Petitioner's submission that at the time of the making of the Order the Magistrate lacked the jurisdiction to grant such an order.

25. The Court also notes that the parties have been co-parenting the child of the family on a one week staying access basis. No evidence has been advanced that the child has suffered or is at the risk of suffering any harm as result of this arrangement. The child is of tender years and parent-child bonding process should not be adversely affected as a result of the physical separation of the parties. Therefore, while the Magistrate's Order may be invalid, the parties appear to have abided by the spirit of the same.

26. I find that based on the evidence before the Court that the parties are in fact sharing the access to and the expenses of the child of the family. The Petitioner seeks \$700 per month towards the maintenance of the child which sum is not supported by the evidence. The Court notes the differences in the earning capacities of the parties and that some financial assistance from the Respondent towards maintenance for the child may be warranted.

Conclusion

27. In all the circumstances, I hereby order as follows:

1. The Petitioner's application for maintenance pending suit is dismissed;
2. The Respondent to pay the sum of \$300 per month towards the maintenance of the child of the family pending suit. The said sum to be deposited to a bank account designated by the parties for that purpose on or before the last working day of each month.
3. The Petitioner and the Respondent to continue to have staying access to child of the family at one week intervals.
4. The Petitioner and the Respondent to share equally the day care and related expenses of the child of the family.
5. The Respondent to continue to pay for the child's hair grooming expenses.
6. Each party to bear their own costs.

Dated the 24 day of March, 2025

[Original signed and sealed]

Constance Delancy
Justice