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

2011/FAM/div/FP/00066

B E T W E E N

RAW

Petitioner

AND

LSW

Respondent

Before: The Honourable Madam Justice Constance Delancy

Appearances: Aisha Ferguson for the Petitioner (*until 17 February, 2026*)
Petitioner pro se

Carla Scott-Clare for the Respondent

Hearing date(s): 12 November 2025; 13 March 2026 and 25 March 2026

RULING

DELANCY, J

[1.] This the Respondent's application is for a variation of the extant Consent Order filed on 19 September 2012 ("the Consent Order").

Brief Background

[2.] A Decree Nisi was granted to the Petitioner on 27 July 2011 and made absolute 13 December 2017.

[3.] On the 21 March 2012, the agreed terms of co-parenting, in relation to their daughter, was concretized in the Consent Order as follows:

1. Joint custody of the minor child of the marriage ALSAW [*de-identified*] born on the 1 March 2008 be granted to the parties with care and control to the Respondent and liberal access to the Petitioner.

2. That the Petitioner is to have access including but not limited to
   (a) Each alternative weekends from Friday to Sunday
3. That the Petitioner do pay $300.00 a month toward maintenance of the minor child of the marriage.
4. That the Petitioner and Respondent do share ½ of the costs of medical expenses.
5. That the Petitioner do pay the school fees for the minor child of the marriage.
6. That the Petitioner to [*sic*] purchase books and the Petitioner and the Respondent share the costs of uniforms.
7. That the Petitioner and Respondent is to provide clothing for the child. The Petitioner is to provide clothing for the minor child to the Respondent twice a year
8. That each party bears their own respective legal fees.
9. **That each party be at liberty to apply**.

[Emphasis added]

[4.] On 26 June 2019 the Respondent filed Summons supported by an Affidavit seeking to vary the terms of the Consent Order the application was not pursued.

[5.] On 29 February 2024 the Respondent filed a second Summons for Variation supported by an Affidavit seeking, inter alia, to recover the arrears of maintenance.

Evidence

[6.] The Respondent's evidence is contained in her Affidavit filed on 29 February 2024 and Supplemental Affidavit filed 14 July 2025, Affidavit of Means filed 8 August 2025 and testimony may be summarized as follows:

(i) The Petitioner failed to consistently pay the maintenance for the child as per the Consent Order and is in arrears;
(ii) That the child resided with the Petitioner and his family for a period of about ten months;
(iii) That there was an incident in August 2022 between the Petitioner and the child which led to her returning to the Respondent's care;
(iv) That contrary to the Petitioner's assertion of economic hardship he has the ability to pay the maintenance for the child;
(v) That the child is currently pursuing tertiary level education which necessitate her relocating to New Providence;
(vi) She has remarried and her spouse who is a non-Bahamian does not have the right to work in The Bahamas.

[7.] The Petitioner's evidence is contained in his Affidavit filed on 19 April 2024 and Affidavit of Means filed 11 September 2025 and may summarized as follows:

(i) That he became in 12 January 2024 and is financially unequipped to make the monthly maintenance payments for the child;

(ii) That the child resided with from 28 December 2021 after the Respondent complained about issues related to the child;

(iii) That there was an incident between him and the child in August 2022 but the child remained in his care until October 2022.

(iv) That he did not receive any contributions from the Respondent for period December 2021 to October 2022. On cross-examination he conceded that he did not make any payments during that period nor did exercise his right to request a variation of the Consent;

(v) That since the child returned to the Respondent's care, his access to the child was restricted;

(vi) That after the child returned to the Respondent's care he asked her to allow him a few months before he restarted the monthly maintenance. He conceded that he did not make any payments from November 2022 to March 2023;

(vii) That resumed payments in April 2023;

(viii) That prior to losing his job, the child was covered by his medical insurance (a benefit of his employment); paid the school fees, books to Grade 11; and consistently purchased clothing for the child.

(ix) That he remarried and has 2 minor children ages 5 years and 2 years;

(x) That he and his spouse own a four-plex also have a mortgage which deducted from his spouse's salary;

(xi) That his spouse is employed as an educator with Ministry of Education;

(xii) That he and his spouse reside in one unit and currently receive rental income from two of the units while the fourth unit remains incomplete;

(xiii) That he has part-time employment on a commission as independent contractor with a local real estate and does odd jobs while working on completing the 4th Unit of the four-plex in his spare time;

(xiv) That the amount of the monthly payments be reduced

Issues

[8.] The Court must determine (i) whether to vary the terms of the Consent Order (ii) the amount of maintenance owing if any and (iii) whether the maintenance ought to continue.

[9.] The Court notes that during the course of these proceedings the child who is a full time student on a partial scholarship attained the age of majority on 1 March 2026. Further the parties have moved on with their lives both having remarried.

Law and Discussion

[10.] Under Section 35 of the Matrimonial Causes Act ("the Act") the Court has the power vary, suspend or discharge the terms of financial orders related to a child of the family granted pursuant to Section 27 of in matrimonial proceedings. Section 35(7) mandates that the Court

must have regard to all the circumstances of the case including any change of the matters that the Court is required to consider under Section 29 of the Act. In particular, the Court must consider:

(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;

[11.] Section 36 of the Act requires an applicant seeking arrears in excess of twelve months to seek leave of the Court "*before proceedings to enforce the payment of them are begun*". In the instant case the Respondent seeks to recover maintenance under the Consent Order which is in excess of twelve months by a Summons for variation of the Consent Order. The Respondent did not seek leave to enforce the Consent Order prior to the filing of the Summons brought in these proceedings.

[12.] At the time of filing the application for variation of the Consent Order the Respondent asserts that the Petitioner was in arrears maintenance payments of some $1,800 for the period 6 months (*October 2022 to March 2023 for which he no longer had staying access to the minor child*); and $2,700 for the period of 9 months in 2024.

[13.] The child's circumstances have changed since the filing of the Consent Order. She is now pursuing full time tertiary education in New Providence. The child receives an annual grant which is renewable upon her maintaining a required grade point average. She requires assistance with living accommodations, transportation and food.

[14.] The Petitioner asserts that his current financial circumstances render him unable to meet his obligations to the child under the Consent Order. The evidence before the Court is that the Petitioner receives income, although sporadic from real estate commissions, odd jobs and rental income. The Court also notes his spouse earns a salary and that the mortgage on their home is deducted from his spouse's salary.

[15.] The Court having regard to all the circumstances notes the lack of communication between the parties as well as the breakdown in communications between the Petitioner and the child. The Court finds this lack communication contributed to the Petitioner being excluded from the decisions making process with reference to the child. Further that in the aftermath of the breakdown in the parental relationship between the Petitioner and the child, and the changes in his financial circumstances he did not avail himself of the right to apply to the Court for variation of the terms of the Consent order.

Disposition

[16.] Having regard to section 36 of the MCA the Respondent is estopped from claiming any arrears before the 29 February, 2023. Though the order is one made by consent, it is an order for the financial provision of the, then, minor child which then is covered by Section 36 of the Act. Therefore, the Court awards the Respondent $3,000, representing the arrears for the period of 12 months immediately preceding this application; specifically, the month of March 2023 and the 9 months preceding the filing of the application in February of 2024.

[17.] The Court further notes that the Respondent seeks an extension/variation of the financial provision of the minor child. Therefore, the Court accedes to this application and orders that maintenance in the amount of $300 be paid by the Petitioner until the child attains the age of 23 or upon graduation, whichever comes first, into the bank account of the child.

Dated the 24 day of June 2026

[Original signed and sealed]

Constance Delancy
Justice