**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO: D13 OF 2002**

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| **BETWEEN** | **A.T.** | **PETITIONER** |
| **AND** | **T.T.** | **RESPONDENT** |

**IN CHAMBERS**
**THE 31ST MARCH 2014**
**BEFORE THE HON. CHIEF JUSTICE**

**Appearances**: Mrs. Rosie Whittaker-Myles of CARD for the Respondent
Mr. David Holland of Samson & McGrath for the Petitioner

## RULING

1. The respondent seeks to enforce the Order made by this Court on the 30th day of April 2003 for payment of maintenance for the children of the marriage. The petitioner claims to have made all payments due but admits that instead of making the payments through the Court Funds Office as ordered, he made them directly to the children M.T. and J.T. A consequence is that he has no record of the payments. The respondent acknowledges that some payments were made. She would give credit for CI$61,182, thus reducing her claim for CI$130,630 for arrears of maintenance, to CI$69,448.

2. A large sum of arrears may well be owing but the reality is that the petitioner's breach of the Order for payment into Court has been condoned by the respondent for more than six years, his last payment into Court having been made on 27 November 2007.

3. The petitioner pleads ignorance of the strict requirements of the Order for payment in that he believed that so long as he was actually making the payments, he would not be in breach. The respondent does not seek an order for his committal for the breach but is keen to recover the arrears and to ensure compliance by payment into Court in the future.

4. The obvious difficulty with assessing her claim is the absence of evidence of what was paid even while there is the admission that the petitioner made substantial payments. Whether those were more than the amounts for which the respondent is willing to give him credit is therefore not an issue which I can properly resolve one way or the other now. All I have is his say-so against her denial.

5. Counsel for the respondent acknowledges this difficulty but says that there is one measure that I can apply. It is the letter of 7th November 2009 from her to the petitioner, written on behalf of the respondent, and reminding him of his obligation to make all payments through the Court Funds Office. The letter also claimed that there were outstanding arrears.

6. I accept that as of the date of that letter, the petitioner could claim no basis for thinking that payments made directly to the children instead of into Court, would be acceptable.

7. I will therefore approach this matter on the basis that arrears are due from the 7th November 2009 when Mrs. Whittaker-Myles wrote to the Petitioner reminding him of the obligation to make the payments into the Court Funds Office.

8. Notwithstanding the non-payment in Court going back as far as November 2007, Mr. Holland objects to the 7th November 2009 being used as the starting point for the

calculation of arrears. He argues that the courts should not enforce maintenance arrears which are due for more than one (1) year, citing section 32(1) of the Matrimonial Causes Act 1973 (U.K.); a provision which he says has been applied "*by way of convention*" by this court. He was unable, however, to cite any such decided cases.

9. The statutory provisions in section 32(1) of the Matrimonial Causes Act 1973 which require a party to first get the leave of the Court before bringing enforcement proceedings in respect of arrears which are due for more than 12 months[1], have not been adopted as part of the laws of the Islands.

10. The imposition of such a requirement should not be done by the Court of its own motion merely as a matter of practice or by "*convention*". Such a requirement could substantively alter the rights of parties to sue for enforcement of maintenance orders. The requirement could also operate to deny the benefit of a maintenance order to children for whose benefit they are ultimately to be enforced.

11. The interpretation of the statutory provision in the United Kingdom has indeed resulted in what is now an established practice of the family courts not to enforce arrears which are more than a year old – see *Fowler v Fowler (1981) 2 FLR 141* and *B v C [1995] 2 FCR 678.*

12. In my view, before this Court could seek to adopt and establish such a practice, nothing less than an equivalent statutory provision would be required.



[1] Section 32(1) provides: "*A person shall not be entitled to enforce through the High Court or any county court the payment of any arrears due under ...any financial provision order without leave of the court if those arrears became due more than 12 months before proceedings to enforce the payment of them are begun.*"

13. I therefore proceed on the basis that the respondent is entitled to bring these proceedings for enforcement of maintenance arrears although the period of the arrears go back a number of years[2]. I am particularly mindful of the fact that the obligation to pay maintenance is not one owed *in personam* to the respondent. It is an obligation owed for the welfare of the minor children of the marriage who had no say in whether or not their mother, the respondent, should have sought to enforce the Order earlier. The recovery of the arrears remains an obligation for their benefit which she is entitled to pursue.

14. I have already noted that the circumstances of the case are such as to make precise calculation difficult if not impossible. The respondent admits that for much of the period in question, the petitioner made payments for the benefit of the children or payments directly to them for their benefit. Both children, M.T. and J.T. now old enough to be in high school, would attest to this. In particular, she acknowledges that he made payments to the children for lunch money for a number of years, including for a period of some five months in 2011 when she was herself incarcerated for an offence and unable to care for the children. While she asserts that the children were cared for by her family in her absence, the petitioner claims to have had direct care, custody and control of them. This too is not an issue which I can resolve on the available evidence.



[2] There is no provision in the Matrimonial Causes Law (2006 Revision) ("MCL") or in the Matrimonial Causes Rules which would limit the timeframe for enforcing maintenance proceedings. On the contrary, section 20 of the MCL could be read as mandating the enforcement of such orders; as could section 8 of the Maintenance Law in respect of orders made under that Law. Section 30 of the Limitations Law (1996 Revision) – the applicability of which is disputed by Mrs. Whittaker-Myles – provides, if applicable, a limitation period of six years for the enforcement of judgments. One aspect of the present judgment that makes the applicability of the Limitation Law debatable is the ongoing nature of the maintenance obligation created by the judgment and so the difficulty in determining when the limitation period begins to run.

15. Payments by the petitioner are acknowledged by the respondent in the amount of CI$61,182 so as to reduce the maximum sum of arrears from CI$130,630 (as calculated based on the absence of payments as shown on the records of the Court Funds Office) to $69,448.

16. The petitioner insists nonetheless that he reached an agreement with the respondent from as long ago as 2007 that he would stop making payments into Court but make payments to herself and the children directly. He insists that he did this and in fact owes nothing by way of arrears. He also claims to have had ongoing primary custody and control of one of the two children of the marriage, their son J.T. ever since the respondent's release from prison and that the obligation to make maintenance payments should be regarded as reduced accordingly, in any event.

17. A still further factor relied upon by him is that J.R., the biological son of the respondent from an earlier relationship but who had been treated as a child of the marriage and included in the maintenance provisions, turned 18 in 2010. For that reason the maintenance order should be regarded as abated by one-third since then.

18. It is now impracticable for me to seek to unravel the arrangements which were allowed to develop between the parties outside of the order which required payments into Court.

19. However, the letter of 7th November 2009, written by Mrs. Whittaker-Myles on behalf of the respondent, reminded the petitioner of his obligation to make the payments of $900 per month ($300 for each child or $225 per week since he is paid weekly) into Court. It made clear that so far as her client the respondent was

concerned, no other arrangement existed so as to absolve the petitioner from his liability and obligations in that regard.

20. Whatever view he took of another arrangement between himself and the respondent and involving payment to the children, the petitioner could have been under no misunderstanding, after the date of receipt of that letter, as to his obligation to make the payments into Court.

21. Mr. Holland on his behalf makes no submission to the contrary.

22. The date of 7th November 2009 letter will therefore be the cut-off date for my calculations of the arrears and this becomes a straightforward matter because no payments have been made into Court since then (indeed, none since November 2007).

23. This approach yields a figure of $26,900 by way of arrears until today's date. That is the sum of the arrears that I conclude and order that the petitioner has an obligation to pay. He will do so by payments of $300 per month or $75 per week.

24. However, maintenance payments going forward are agreed to be reduced to reflect the fact that J.R. is no longer provided for, having turned 18 in 2010. Accordingly, in keeping with the original order, the payments going forward will be $300 per month for each of M.T. and J.T. This amount of $600 per month – when added to the payment of $300 per month towards the arrears – gives a total of $900 per month (or $225 per week; this latter being the manner of payment preferred by the petitioner).

25. So the order will be that he pays $225 per week by way of maintenance for M.T. and J.T.; all payments must be made into the Court Funds Office. The payments are to be applied as to $150 per week ($600.00) per month to on-going maintenance and $75 per week ($300 per month) towards the arrears of $26,900. I record that the

petitioner recognises that this matches the amount he was originally ordered to pay and acknowledges that he is able to make the payments.

Hon. Anthony Smellie
Chief Justice