

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

18-Feb-10
(H/S)

CAUSE NO. D129 of 2005

BETWEEN: MARIA-CONSTANZA LINDSAY FEAR PETITIONER
(nee GIGLIOLI)

AND: RICHARD DAVID FEAR RESPONDENT

AND: SHARON HOLLOWELL CO-RESPONDENT

Appearances: Mr. David McGrath of Samson & McGrath
for the Petitioner

Mr. Nigel Meeson Q.C. of Conyers Dill & Pearman
for the Respondent

Before: Hon. Justice Henderson

Heard: February 16, 2010



JUDGMENT

1. In my ruling of March 30th, 2007 I awarded to Mrs. Fear spousal maintenance in the sum of \$2,350 dollars per month. That award was

considerably lower than the amount which might have been justified by Mr. Fear's earnings which, at the time of the hearing, had averaged \$418,000 dollars over the preceding three years. (All of the figures in this judgment are, for convenience, stated in U.S. dollars.) One significant factor to which I referred in my judgment was Mr. Fear's promise to pay the entirety of the "relatively expensive" school fees for Elena, the child of the marriage. Another factor, which I considered of "even more significance," was described this way:

"Mr. Fear, by his own act, has reduced his income by about half. He has done so unilaterally, without the consent of Mrs. Fear, and he has done so for commercial reasons which may or may not turn out to be well founded. In doing so, he is, in effect, imposing part of the risk on Mrs. Fear. His decision, in which she played no part, has had the effect of reducing very considerably the spousal support which Mr. Fear would otherwise have to pay. As I have already indicated, it is probable that Mr. Fear's income will increase in years to come, and it seems to me only right that Mrs. Fear should have the ability to share in that increase in income."

I then made the award of spousal support indefinite and reminded the parties that each could apply for a variation of the order if a material change in circumstances were to occur.

2. Each of the parties has now applied for a variation. Mrs. Fear says that recent changes in circumstances should entitle her, now, to an award of \$5,000 per month. Mr. Fear argues that the circumstances have changed in such a manner that there now should be a clean break between the parties; he asks that spousal support be terminated.

3. First, I must consider whether there has been a material change in circumstances. I have no jurisdiction to entertain an application for the variation of a spousal maintenance order unless such a change has occurred.
4. In my earlier judgment I deducted from Mr. Fear's income for the purpose of determining his spousal support liability the sum of \$8,500, representing the amount he was paying towards Elena's school fees and upkeep. That liability no longer exists. This change, alone, amounts to a material change in the circumstances of the parties. I am also satisfied that the forthcoming change to the taxation regime in the United Kingdom is a material change (to the detriment of Mr. Fear) which would provide a sound basis for reviewing the quantum of spousal support.
5. As I noted in my earlier judgment, the Fears were married for twenty years. Mr. Fear pursued a successful career as a chartered accountant, banker and lawyer in the Cayman Islands. Mrs. Fear worked as a legal secretary. She, also, has achieved some success in her field; her income has increased to \$5,667 per month.
6. The parties agreed in 2007 to sell the matrimonial home. The evidence before me suggests that the property has not been marketed aggressively and may have been listed at an unrealistically high price. In any event, it has not sold. For the last three years Mrs. Fear has been living rent free in the matrimonial home. It follows that, for present purposes, I should

attribute to her as income the same sum (\$850) which I attributed to her in 2007. Her income for the purpose of the present analysis is therefore \$6,517.

7. The financial position of Mr. Fear has also changed. Since he no longer has any liability to support Elena and pay her school fees, it is no longer appropriate to deduct from his income (as I did in 2007) the sum of \$8,500 dollars. His earnings at his new law firm in London (by way of salary and bonus) have now increased to \$17,199 per month. That figure takes into account certain changes in the exchange rate which have worked to the detriment of Mr. Fear. In addition, imminent changes to the tax regime in the United Kingdom (which will take effect in April, 2010) will reduce Mr. Fear's net income by a further \$1,070 per month. On the other hand, because he no longer has any liability to support Elena or to pay her school fees, the deduction from income of which I gave him the benefit in my 2007 analysis no longer has any application. It follows that Mr. Fear's current income for the purpose of this analysis is \$16,129.

8. I accept that a party may, where there has been a material change in circumstances, argue that an award of spousal support which has been made indefinite should now be terminated. Nothing has been advanced on behalf of Mr. Fear on this application which would justify such a course. Essentially, he argues that there should have been a clean break between the parties; that argument was advanced and rejected in 2007. He says that he has now remarried, purchased a residence in England, and acquired a

substantial debt obligation for it. Those are choices he has made with full awareness of his pre-existing spousal support obligation. There is no merit in the suggestion that an award of spousal maintenance for an indefinite period of time should be terminated a mere three years later because the payor spouse has chosen to remarry and take on new and substantial financial obligations.

9. In my earlier judgment, I took the exceptional course of recognizing that Mr. Fear's income in the immediate future would decrease dramatically; I acceded to his submission that his spousal support obligation should not be based on his average income over the preceding three years. In the passage from my judgment quoted above, I noted that the reduction in income came about by his own unilateral act. I expressed clearly the intention that Mrs. Fear should enjoy the ability to share in the expected increase in Mr. Fear's income as time passed. His income has increased, and my task now is to award to Mrs. Fear an amount which is an adequate reflection of the increase.

10. In light of the evidence presented on this application and on the 2007 application, and after consideration of the arguments presented then and now, I find that the appropriate amount of spousal maintenance is \$4,500 (CI \$3,600) per month. The first such payment is to be made March 1, 2010. The award is indefinite.

11. Each party is at liberty to apply should a material change in circumstances occur.

12. The parties are at liberty to speak to costs if they are unable to agree.

Dated this 18th day of February, 2010

Henderson, J.

Henderson, J.
Judge of the Grand Court

