



IN CHAMBERS
 IN THE GRAND COURT OF THE CAYMAN ISLANDS
 DIVORCE AND MATRIMONIAL CAUSES REGISTRY

CAUSE NO. D74 OF 1996

BETWEEN SUSANNE GAYLE McLEAN PETITIONER
 AND RODERICK ALLEN McLEAN RESPONDENT

Mr. Nicholas Mostyn QC for Petitioner instructed by .Angelyn Hernandez of Quin & Hampson

Respondent appears in person

RULING

This is an application by the Petitioner seeking a number of orders in relation to the schooling and maintenance of the children of the marriage. All matters relating to the matrimonial property , and a number of issues relating to the said children were settled by a Consent Order of the Court dated 27th September, 1997.

The first order sought relates to the child **Jordan McLean**, and is as follows.

- (a) That the Court give directions as to the appropriate schooling and academic institution to be attended by the said child.
- (b) That the Respondent be ordered to pay maintenance to the Petitioner for the said child.

In determining this issue I am guided by the order made in this matter by Smellie J, (as he then was) on 30 June 1997. In it the Learned Judge said "The Respondent and

Petitioner will consult with each other in respect of the education of the child Jordan.”

This child suffers from a learning disability in that he is dyslexic and therefore requires special education. The chronology of events shows that in 1996 Jordan was sent off to the Greenwood School in Vermont, USA, and from exhibits placed before me, he appears to have been doing quite well there. The evidence shows that in the early part of 1998 the Respondent unilaterally decided to remove Jordan from Greenwood and enroll him in Fraser Academy, a school close to Vancouver where the Respondent’s parents live. The Respondent alleges that this was done because Jordan, on spending a vacation in Vancouver with his grand parents, expressed the wish to be enrolled at a school close to that city to enable him to enjoy many of the facilities that were not available at Greenwood. Another consideration was that he would be with his grandparents. It appears that when the Petitioner finally learnt of this decision, she dispatched a report, written by one Dr. Lannigan regarding Jordan’s mental state to Fraser Academy, and as a result, Jordan was denied admission. In the meanwhile, following a recommendation from Dr. Lannigan that Jordan would benefit from a therapeutic boarding school, the Petitioner took steps to have him enrolled at Crater Lake. This school advertises itself as an “Integrated new-generation pharmacology professionally prescribed, a therapeutic milieu with psycho-educational curriculum...”

It is quite clear from the attitude of the parties that, notwithstanding the fact that they both express the desire to have the child receive a good and suitable education, they cannot agree on the issue. The Respondent objects to this school on two grounds. Firstly, that it is far too expensive, for although the fees are not out of line with other such institutions, the cost of counseling at \$175.00 per hour is exorbitant. Secondly, he fear the drugs might be injected or administered to the child at that school, and is

of the opinion that it is the Petitioner's fascination with pharmaceuticals that has endeared her to that school. He calculates that the fees for a year would not be much less than \$100,000.00.

The Respondent has erroneously alleged that by an agreement between the parties and their attorneys, a cap was placed on the amount expendable for the children's education. There is no evidence before me to support this. It is acknowledged that the Trust Fund set up by the Respondent to provide for the education of the children now has a balance of CA \$513,000.00, which is approximately C\$275,000.00. It is the belief of the Respondent that the annual expenditure for Crater Lake would in a few years exhaust the fund, leaving nothing for the education of the other children. For the purpose of this ruling, the above is purely academic. This limb of the application is brought pursuant to a ruling by Graham J. which, *inter alia*, states, I quote, "failing any agreement in respect of the continued education of the children by the parties, the Court do review and determine same."

The parties now having failed to come to an agreement over this issue, it is now for this Court to determine same. Both parties have put forward valid reasons for their objection to the other's choice. The Petitioner, although not directly condemning Fraser Academy, expresses her belief that a day school might not be in the best interest of the child. Fortunately, a third school has been approached, this is Cedu. This institution appears to provide the special education that Jordan requires, and judging from the parties' attitude, it appears to be acceptable to both as neither has raised any real objection to it. I have carefully perused its' brochures and am satisfied that failing any agreement by the parties for the child to attend Fraser Academy or Crater Lake, Jordan is to be enrolled at Cedu. His airfares to and from that institution

are to be paid by the Respondent. He will also be responsible for the petitioner's first airfare to accompany the child Jordan to the institution. Thereafter either party wishing to accompany him will have to pay his or her own fare.

The second limb of this application regarding Jordan seeks an order for the Respondent to provide maintenance for the said child. Maintenance has already been agreed in the sum of \$6,335 per annum, or \$528 per month. This will be payable to the Petitioner only during the period when Jordan is in her physical care, and residing with her. There has been some dispute regarding arrears of maintenance for the children. This allegation has proven unfounded as through no fault of the Respondent, the money was lodged to the wrong account. The Respondent will however, continue his maintenance payments as agreed to in the Consent Order.

Paragraph two on this summons is in relation to the children **Jacob McLean and Jonah McLean**. It seeks an order that the Respondent pay all outstanding school fees regarding their attendance at Grace Academy. By a provision of the Consent Order of the Court dated 23 September 1997, it was agreed that these two children would attend Grace Academy until further order, with liberty for either party to apply in relation to their education. It matters not that at the time that the agreement was signed this was not actually the Respondent's wish, and, as he alleges, he was coerced into signing it by his then attorney. This agreement stands until there be a further order of the Court. The Respondent is therefore liable for any outstanding school fees for these children. There is before me a claim for \$10,208 for these arrears. The Respondent has drawn the Court's attention to exhibit 18 of his affidavit dated 27 November 1998. This is a letter from the Senior Trust Officer of the Royal Bank of

Canada showing that the arrears are \$6,038.63. He represents the amount which the Respondent and the Trust Officer consider reasonable in accordance with the alleged cap placed on these expenses by an agreement between the Attorney for the parties. I am satisfied that there exists no such agreement, and accordingly, in this regard the Respondent is indebted in the sum of \$10,208. This amount must be paid within fourteen days hereof.

I now come to paragraph 3 of the summons which is in relation to **Josh McLean**. The application is for an order that the Respondent provide maintenance to the child for as long as he continues his education. The second limb of this application is that the Respondent be ordered to pay the college expenses for the said child.

There is absolutely no basis in law for such an application. Section 22(f) of the Matrimonial Causes Law (1997 Revision) provide, *inter alia*, as follows:-

At the time of pronouncing a decree under this Law, the Court shall, as appropriate, make orders for providing for periodic payments to be made by either spouse for the benefit of the children of the marriage.....

Section 23(1) of the Law Provides, *inter alia*, as follows:-

Where an order is made under section 22 for periodic payments, such order, unless varied by the Court, shall remain in force in respect of payments to a spouse, until the remarriage or death of such spouse, and in respect of payments for the benefit of a child of the marriage until the death of such child or until such child attains the age of sixteen years.

Provided that in the case of payments for the benefit of a child of the marriage, the Court may extend the period of such payments so long as the child is receiving education and is under the age of twenty one.

The evidence reveals that Josh is now twenty years of age. At the time the Consent Order was made he was at least nineteen, above the age for which the Court could make such an order. In cannot be denied that such could have been included in the Consent Order, particularly one for periodic payments to the Petitioner for the maintenance of the said child. However, the only mention made in that order regarding maintenance of children refers specifically to the minor children. Josh is now an adult and outwith the parameter of any order the Court could make for periodic payments of maintenance under the Law. During the course of the hearing the Respondent made, what is in my estimation, a very generous offer, to wit, should Josh come to live with him he would support him, pay the fees for his education, and even provide him with transport. Joshua has already, at the Respondent's expense, been given the opportunity to avail himself of a university education which he is reported to have flunked. It is now clearly a matter for this young man to decide whether he wishes to take advantage of his father's generosity, or remain with the Petitioner. This Court cannot, and will not make any order in his regard.

By paragraph 4 of the summons the Petitioner seeks the following orders;

That the maintenance provisions contained in the Consent Order filed on 23rd September 1997 :

- (a) be reviewed so as to reflect actual circumstances.
- (b) that the Respondent be ordered to pay the arrears outstanding.

The maintenance order referred to in (a) above is contained in clause 8 of the Consent Order. It makes allowance for an adjustment to the said payments on 1st. October each successive year by reference to the increase (or decrease) in the Cayman Islands Cost of Living Index over the preceding 12 months. There is no contention between the parties in this regard. The variation now sought is for the Respondent to pay, or cause to be paid, Joshua's college fees, together with any extras on the college bill by payment direct to the school within fourteen days of the date of that invoice of the school if sent to him.

I have already stated above that the Respondent bears no legal responsibility for this adult child. Any variation of the relevant clause on the Consent Order in this regard would have to be done with the consent of the Respondent, and not under this order.

(b) It is clear that there are no arrears outstanding in regard to Joshua, and as I have already stated, or for any of the other children. However, as has been agreed, the Respondent will make maintenance payments to the Petitioner for the benefit of Jacob and Jonah at the rate of CI\$528 per month payable in advance with effect as from 1 January 1998 by standing order into the Petitioner's bank account with the Royal Bank of Canada account No. 506333-4 until the said children attain the age of 16 years of age or complete full time education (if later) or further order. The order will be adjusted on 1 January each year by reference to the increase or decrease in the Cayman Island Cost of Living Index over the preceding 12 months. The issue of the arrears of school fees of \$10,208 has already been determined in this ruling.

Perhaps the most ambitious application contained in the summons is that under paragraph 5(a) which is as follows:

That pursuant to undertaking (4) of the Consent Order:

- (a) that the Respondent be ordered to reimburse the Petitioner all medical costs and expenses in relation to the children of the marriage.
- (b) that this provision be reviewed to reflect the actual circumstances.

The undertaking referred to in the Consent Order is for the Respondent to pay all reasonable educational, medical and optical expenses incurred in respect of the minor children of the family, Jordan, Jacob and Jonah.

Pursuant to this the Petitioner is claiming the sum of \$3,208 in medical expenses. The list of medical expenses makes fascinating reading. In the course of the year from October 1997 to October 1998 she had Jonah pay 31 visits to the Chiropractor, Jacob 26, Jordan 11, and Joshua 5. She also made 34 visits to various pharmacies, fourteen visits to physicians, (many for mere consultation) and 2 to optometrists. It is difficult to fathom how four young male siblings could all need so much medical attention, and be required to ingest so many pharmaceuticals. What is more, this is without the health insurance that has been made available to them. This seems to confirm the Respondent's allegation that the Petitioner has an unusually high interest in pharmaceuticals, and his fears that the children are being turned into hypochondriacs. The Consent Order specifically refers to "reasonable" expenses and it must be obvious to any normal and reasonable person that this behaviour is not reasonable. It gives me great doubts regarding the welfare of the children in her care.

I cannot in all good conscience order the Respondent to reimburse the Petitioner for these expenses. He has offered to pay the dental bills, and this he must do on their presentation. It is not denied that health care is available to the children on the Respondent's insurance for which, he states, the Petitioner has the application forms. She has expressed her unwillingness to have any further contact with the Respondent, hence her reluctance to have the children continue to remain on his insurance. The present situation does not support this contention. As long as he is responsible for their maintenance and school fees there must, of necessity, be contact between the parties. It seems to me the reasonable thing for her to do is to submit her claims directly to Aetna. This Court will not order payments which it considers unreasonable, particularly where health insurance is readily available. Furthermore, it is my firm opinion that should the medical expenses that she incurs be subjected to the scrutiny of an insurance company, she may very well feel obliged to think twice before incurring any that are unreasonable.

Pursuant to this, paragraph 4 of the Consent Order is hereby revoked.

I notice that included in the arrears claimed from the Respondent, there is a sum of \$8,116 unpaid to Lime Tree Bay as referred to in undertaking No.3. The parties have agreed that this amount be paid by the Respondent to Mr. Michael Alberga to be held by him as agent for twenty eight days to give the Respondent sufficient time to have this debt transferred to his name. Failing such a transfer the amount is to be paid to the Petitioner forthwith.

Paragraph 6 of this summons is an application for an order that the Respondent be ordered to provide security in respect of his continuing obligations under this order. It appears to me that this comes as a direct result of the unfounded belief that the Respondent was in arrears of maintenance payments. I can see no reason for making such an order as, apart from his mistaken belief concerning the payment of school fees at Grace Academy, there is no evidence that the Respondent has been recalcitrant in making the required payments.

Paragraph 7 of the summons is a non-contentious application. Provided the Petitioner provide written prior notice she is permitted to leave the jurisdiction with the children.

I now come to the final application, and that is for costs to be set by the Court or be taxed on an indemnity basis. Mr. Mostyn for the Petitioner has referred the Court to Order 62, r.3(1)(b) of the Supreme Court Practice provides as follows:-

Whenever the Court makes an order for costs, the party entitled to the benefit of the order shall be entitled to have the amount of such costs assessed by the Judge.

Although a similar provision exists in the Grand Court Rules, at Order 63, r.3(3) there is a rider. This provides that the amount of costs payable by any party to an order for costs to be assessed shall not exceed \$500.

The learned Queen's Counsel concedes that this is indeed the case in this jurisdiction, hence his request that it be taxed on an indemnity basis. From time to time such costs are ordered, invariable in cases where the other parties has caused the applicant to

incur unnecessary expensed that could have been avoided, but for his actions. This is certainly not the case here. This summons is, for the most part, pursuant to the Consent Order signed by the parties. there have also been genuine disagreements, and misunderstandings between the Petitioner and the Respondent. Furthermore, the success attained by the Petitioner in this summons can only be considered partial. Accordingly, it would be unfair for this Court to penalise the Respondent in the matter of costs,

There will therefore be costs to the Petitioner to be taxed or agreed.



KIPLING DOUGLAS
Judge of the Grand Court



21st December, 1998