

CJ.
10.4.95

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. D 155/93

BETWEEN:	OLIVER NORMAN BODDEN	PETITIONER
AND:	MAVIS BODDEN	RESPONDENT

For the petitioner: Mr. K. Collins
For the respondent: Mr. N. Levy

HARRE CJ.

JUDGMENT

On 16th October 1987 shortly after the parties separated, the Magistrate made an interim maintenance order in respect of the respondent and the adopted child of the parties, who is the respondent's grandchild. He has been in the care of his natural parents in Jamaica for several years.

The interim maintenance order provided for payments by the petitioner of \$20 per week for the respondent and \$30 for the child. A further order dated 18th December 1987 increased the amount to \$50 for the

child and \$40 for the respondent, she being ordered to leave the matrimonial home. By 24th May 1991 when the Magistrate ordered that the order be suspended there were arrears of \$11,330. By that time a divorce petition had been filed and I am asked to declare that the Magistrate had in those circumstances no jurisdiction to suspend the order and that arrears continued to accrue. I decline to do that. I know of no authority and none was cited to me for the proposition that the filing of a divorce petition of itself terminates the Magistrate's jurisdiction to deal with an existing order for maintenance in his court.

There is no evidence that in suspending the order the Magistrate intended to waive the arrears. There must be a presumption that he did not. But the respondent has done nothing about enforcing these for nearly four years. She says that she was forced to go back to Jamaica because she had no home or money here and because she and the child were being ill-treated by the petitioner.

The petitioner says that she left Cayman of her own volition to frustrate the completion of her divorce because she wanted to retain her Caymanian status.

Probably there is an element of truth in each of those versions of events. My task is not to delve into these old contentious matters but to assess what is available now and to decide what is a just solution now in accordance with S.18 of the Matrimonial Causes Law.

There was no affidavit evidence from the petitioner. He gave oral evidence that he earned \$1300 per month from his regular job, supplemented by between \$50 and \$200 per week from fishing. I will assess that as the median figure of \$125. He owns his boat outright. He has a lady friend and a baby boy. His rent and food, he says, comes to \$800 and he pays \$90 towards bank loans and \$200 in school fees. Their lady's son, a barber, also lives with them.

I accept the petitioner's account of the arrangement he made with Alvin Barnes in relation to his house and that he received no money from that. What he said is consistent with the correspondence and other documents dating from 1989, which I read with the consent of the parties. The respondent now claims to be destitute and unable to work.

Both parties to this marriage are now in their early sixties.

This court does not look kindly on those who fail to make payments in accordance with its orders, nor upon those who let arrears mount up for years to an unmanageable figure without taking any action. It would be unrealistic to expect the petitioner to pay a lump sum in respect of the arrears. I shall, however, award a periodic payment to the wife to reflect the existence of the arrears of \$11,330.

I do not express any proportion of the total figure as being for the purpose of the completion of the adopted child's upbringing, bearing in mind that the child is with his natural parents now and is already

fourteen years old. It does, however, provide for the possibility of some assistance being necessary, and being provided by the respondent.

On that basis I award \$100 per week to be paid by the petitioner to the respondent, such payment to be made by Friday of each week.

Costs in the cause.

Dated 10th April 1995



G.E. Harre

Chief Justice