

2.3.95

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

CAUSE NO. D 89/88

PETITIONER
RESPONDENT

BASILIO VANBURN CHRISTIAN
JANET EDRIA DAWN CHRISTIAN

BETWEEN:
AND:

For the petitioner: Mrs. Eileen Nervik
For the respondent: Mr. Keith Collins

JUDGMENT

This was a marriage which lasted but a few months during 1986.. The husband is Caymanian, the wife Jamaican. He is 55, his wife nearly 43. After an appeal from the Grand Court the following order was made by the Court of Appeal on 4th December 1989 -

"Decree of dissolution should be pronounced. Pronouncement postponed and not to be finally made until issues are finally determined."

on 16th February 1989 the Court had ordered that the petitioner pay to his wife, the respondent, CI\$25 per week from 24th February 1989 until the final determination of this matter.

It is common ground that only \$50 was ever paid under this order. By the time of the issue of a commitment summons on 21st September 1994, \$6,900 in arrears had accumulated.

The husband says that he believed that the effect of the Court of Appeal judgment was to conclude his divorce and he had thereafter no further liability to make the payments under the interim order.

Support is given to this assertion by a letter from his then attorney dated 17th December 1990 in which he was told that on rechecking of the file it was necessary to tell him that he was not divorced, even though the final payment which he had made included a sum for a Certificate of Dissolution. I do not accept that that payment included any sum to be paid to the wife.

Nearly four years passed before the wife did anything about enforcing the maintenance order by issuing the commitment summons. The parties' accounts of what happened between them during that time differ widely. The wife says that he constantly rang up her employer while she was working at the Grand Pavilion and Radisson Hotels telling them to fire her. He denies that completely and her oral evidence about it was nebulous hearsay. He says he had no dealings with her over these years.

In any event matters came to a head in 1994. According to the husband's version of events the issue of the commitment summons was in furtherance of the wife's threat to put him in jail if he did not pay her, that being the result of his refusing to sign a letter to the Immigration Department on her behalf. She denies that, saying that if the petitioner had not taken it on himself to interfere with her various jobs on the Island it might not have been necessary to bring him up for the maintenance but, she says, he caused her to lose her job at the Radisson and is trying very hard to make her lose her present one at the hospital.

On balance I prefer the husband's version of events. He had no reason other than pure vindictiveness, believing himself to be divorced and free of ties as I accept he did, to harass his wife for years on end. She, as she admits, knew that she was still married and therefore had some reason to seek her husband's help in relation to her immigration problem and back it with the threat that she would claim for the arrears if he did not provide it. She also had good reason, as a Jamaican, not to press for dissolution of her marriage.

It is not a question about which there can be certainty and fortunately there are other more fundamental factors relating to the decision in this matter. Its relevance relates to the extent, if any, to which the wife's chances of staying on this Island have been, or may still be, prejudiced by anything her husband has done or may do. I shall send a copy of this ruling to the Chief Immigration Officer with an expression of hope that the views of disgruntled spouses about their former partners are, in general, regarded with caution in making decisions of that kind.

I attach more importance to the following factors.

1. The marriage was an extremely short one.
2. There are no children.
3. The husband was given some reason to believe that he had no more to pay on the interim order from 4th December 1989, the date of the decision of the Court of Appeal, by the conduct of his attorney. However, the failure to keep up the payments before that date was a deliberate flouting of the order of the Court. That cannot be condoned and he will be ordered to pay those sums in full with and addition to reflect both the disapproval of the Court and the delay in payment which the wife has suffered.
4. The husband is an unskilled worker of 55, with a doctor's certificate indicating that he suffers from hypertension and a heart condition. He is a jobbing painter and part-time fisherman.
I accept his evidence as to his modest financial means.

The wife's evidence is that she earns \$2000 per month at the George Town Hospital and her expenses are \$1785. Out of this she says she spends on average \$525 per month on telephone bills- an extraordinarily high figure - and sends on average about \$300 home for her family in Jamaica (which she has no legal obligation to do). She is paying \$250 per month for a piece of land in Midland

Acres. Her other expenses are unremarkable. While she holds her job she is better off than her husband. But she fears that her tenure may be short as she is a Jamaican. It would be quite unjust, on the basis of a few months of childless marriage, to expect her older, unskilled husband to spend his advancing years safeguarding her against that. It is inherent in her situation here. She did not leave her homeland to marry the petitioner. She had already been here for some years.

On the other hand, the husband made little attempt to comply with the Court's order even before the decision of the Court of Appeal in 1989. I calculate his arrears at that time at \$950. Bearing in mind the time which has elapsed since then, and without entering into fine calculations of interest but hearing in mind all the factors set out in S. 18 of the Matrimonial Causes Law, I think that a just sum to be awarded to the wife is \$1500, to be paid at the rate of \$25 per week into the Courts Office, and I so order as a final settlement of ancillary matters.

There will be no order for costs.



Dated 2nd March 1995

G.E. Harre
Chief Justice