

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

D54 OF 1999

BETWEEN: KAREN PERRY PETITIONER

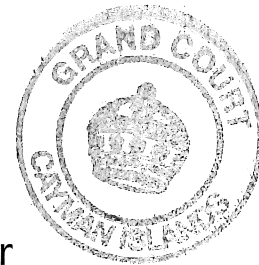
AND: SANFORD PERRY RESPONDENT

ORAL REASONS FOR JUDGMENT

CORAM: Sanderson J

DATE: 19th October 2006

Appearances: Mrs. Eileen Nervik for the Petitioner
 Mr. David McGrath for the Respondent



The Respondent applies to reduce the amount of monthly maintenance from US\$750.00 per month.

The Petitioner applies for an order that the Respondent be committed to prison for failure to pay maintenance of \$750.00 per month for the months of July, August, September and October 2006.

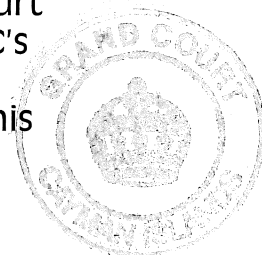
The Respondent has in the twelve months from September 2005 to August 2006 earned income of approximately \$45,000.00. He did not make any maintenance payments during that period of time until the Petitioner filed an application to commit him to prison. That matter came before Mr. Justice Henderson on September 13th 2006, who indicated that he was minded to find the Respondent was in willful default of the court order to pay maintenance. He adjourned the application to September 29th 2006, to allow the Respondent the opportunity to obtain counsel and to pay the arrears of the \$7,500.00 then claimed.

On September 29th 2006 the Respondent had paid the claimed arrears of \$7,500.00, but had not paid the arrears that had accrued thereafter for the months of July, August and September.

The Respondent advised Henderson J that he was applying to this court on October 19th 2006 for an order reducing the monthly maintenance. Henderson J ordered that the committal application also be adjourned and heard today.

The Respondent filed an affidavit and was also cross-examined on his affidavit in chambers. He was not a credible witness.

The Chief Justice had previously made an order that the Respondent was to advise the court and the Petitioner's counsel when he obtained full time employment. He was employed full time in February or March of 2003 by the Canadian Imperial Bank of Commerce at a salary of approximately \$55,000.00 per annum. He failed to advise the court of the Petitioner's counsel of his permanent employment. I do not accept his explanation as to why. He continued to make his monthly maintenance payments of \$750.00 because an attachment order had previously been issued by this court against the Canadian Imperial Bank of Commerce. When he left CIBC's employment in approximately September 2005 he obtained other employment but ceased making any maintenance payments until this application was brought. He then paid the \$7,500.00 claimed in the summons but failed to pay the arrears that had accrued since the summons was filed.



During two of those months his son Andre lived with him in Cayman.

Andre lives with his mother in Florida. His mother has recently given up work, as she now cares for her own ill mother. The Petitioner and Andre both lives with the Petitioner's mother, and accordingly accommodation and food are provided.

The Responded deposed that he only has a fixed income of \$2,000.00 per month, but earns other money when his employers company is able to pay. In the preceding year his actual income was approximately \$45,000.00. He says he is optimistic that his income may go up next year.

He is also the beneficial owner of land worth approximately \$90,000.00 that is unencumbered. He also owns a 2004 Jeep Liberty automobile that is also unencumbered.

I am satisfied beyond any doubt that the Respondents decision to not pay maintenance from September 2005 to September 2006 was entirely willful and without any justification. It was an intentional and

selfish disobedience of this court's order and an abandonment of his obligation to support his son.

Rather than accept responsibility he now blames the Petitioner and her counsel for deliberately misleading the court. Yet he offered no acceptable explanation why he did not make any payments until faced with the committal order.

For the past year the Respondent has earned sufficient income to pay the maintenance ordered. His own testimony is that he is optimistic that his income may increase. There is no basis for an order reducing the amount of maintenance previously ordered. That amount will continue including the months that Andre is with him. \$750.00 is not a large amount and considering his ability to pay and the best interest's of the infant child, those payments will continue for all 12 months of the year.

There is not doubt that the Respondent is in contempt of court. The only question is should he be incarcerated. I do not think that incarceration will serve any useful purpose at the moment. It will, however serve to remind the Respondent that there will be consequences for any further breach of this court order and to assist any other judge in dealing with any subsequent applications.

The Respondent is ordered to pay \$1,000.00 by 4:00 p.m. Tuesday October 24th 2006, with a balance of the arrears, namely \$2,000.00 to be paid by December 31st 2006. Failure to make either of those payments will result of the Respondent being committed to prison for a period of 14 days without the necessity of further court order. The other monthly payments for maintenance will remain as is.

DSanderson

Sanderson J
Acting Judge of the Grand Court

