

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION**

CAUSE NO. FAM 257 OF 2010

BETWEEN: **MONIQUE V. BURTON** **Petitioner**

AND **ALGWENON A. BURTON** **Respondent**

Appearances: The Petitioner in person
The Respondent in person

Before: Hon. Mr. Justice Richard Williams

Heard: 24 November 2021

Date of Judgment: 25 November 2021



HEADNOTE

Financial Provision - Enforcement child maintenance – Variation of the child maintenance to include school fees order.

JUDGMENT

Application

1. This is the hearing of the Petitioner mother’s (“the mother”) application for enforcement of the child maintenance order made by this Court on 7 April 2016 and for a school fees order. There is a long history of non-payment, sporadic or partial payment by the father and, as a result, considerable arrears have accrued. The only time that maintenance has been effectively paid is when the father has had an Attachment of Earnings Order.

The Parents and the Children

2. The parents were married on 16 August 2008. The mother filed her Petition for the Dissolution of Marriage on 20 October 2010. On 31 January 2014, the Decree of Dissolution was granted.



3. There are two children of the family. AB, who was born on 23 May 2008, and AAB who was born on 10 May 2011. There is a Residence Order in relation to both children made in favour of the mother. AB is in good health. AAB has learning and health issues that require her to attend overseas medical appointments and which require her to attend Hope Academy where she receives special education tuition. She has been diagnosed as having *“Specific Learning Disorder – with impairments in reading and writing and written expression and Attention Deficit Hyperactive Disorder – Combined Type”*.¹

4. The Respondent father (“the father”) contends that AAB should attend a cheaper school, but he conceded that he has not conducted any research in that regard and he cannot suggest any suitable alternative that would meet her obvious needs. It was very apparent that the father has little insight into AAB’s educational and health needs. At this time, I am satisfied that it is in AAB’s best interests to remain at Hope Academy, where she is very settled and where her educational and some of her health needs are being well met. For her needs to be met, her attendance at the school is a priority and her parents must tailor their finances to best enable that.

The Procedural Background

5. Initially the father questioned the paternity of AAB and so on 16 August 2013 he was ordered to undertake a DNA test. On the same date, the father was ordered to pay interim child maintenance of \$50 per week per child. The father failed to obtain the DNA test. However, at the hearing on 25 October 2013, he accepted paternity of AAB and the interim child maintenance order for \$50 per week per child was continued.

¹ Psychological Evaluation – The Wellness Centre - 31 October 2018 – attached to affidavit of the mother sworn on 20 January 2021.



6. At the final ancillary relief hearing held on 18 December 2013, after a review of the family's finances, this Court increased the child maintenance figure to \$60 per child per week. The Court also ordered that the parties should equally share any health expenses for the children which were not covered by the health insurance. The father has since that date made no contribution to the expenses that have been incurred by the mother when she has had to travel overseas with AAB for that child's medical appointments. The mother has had to take out a personal loan which has a balance of approximately \$3,000 to enable her to meet those costs which are not covered by CINICO Health Insurance.
7. Unfortunately, on 20 February 2014, the mother was compelled to file a Summons to enforce the child maintenance order because the father had failed to make the payments. On 14 March, 2014 Hall J made an Attachment of Earnings order in the sum of \$120 per week, and adjourned the issue of arrears.
8. On 29 April 2014, that Summons came on before Henderson J. The father failed to attend that hearing. On 12 May 2014, the matter again came before Henderson J and he adjourned the hearing to 14 July 2014. On 14 July 2014, Henderson J, upon the father promising to pay \$300 by 28 July 2014, again adjourned the arrears application. At a hearing on 20 July 2014, Henderson J noted that the father had paid \$300 and he adjourned the arrears application generally.
9. On 18 October 2014, the mother restored the matter to Court, by her Summons dated 10 October 2014 in which she sought an order for immediate payment of arrears of \$4,810. That Summons did not come before the Court until 6 March 2015, when it appeared that the Court was told that the arrears figure was somewhere between \$5,605 or \$7,000. This Court required additional information to properly ascertain the arrears figure and it



confirmed that the 18 December 2013 order remained in force and that, therefore, the father was still to pay \$60 per child per week. The mother's Summons was adjourned to 31 March 2015 and the father was directed to file and serve a completed Statement of Means form by 26 March 2015, which he did.

10. When the matter came before this Court on 31 March 2015, I was not able to deduce the level of arrears, as the Court Funds Office had failed to provide an accurate arrears statement. I made an attachment of earnings order of \$120 per week, adjourned the mother's application in relation to the arrears and again ordered that the Court Funds Office provide a payment arrears statement.

11. When the matter came back before this Court on 17 April 2015, the arrears were assessed at \$7,585. The father indicated that he had left his employment and the Court directed that he was to provide, within seven days of any new employment, the details about that employment to the Court. Having regard to his income capacity, the maintenance order was not varied and the mother's Summons was adjourned generally with liberty to restore. At that hearing I made the following remarks:

"The father should be conscious that the arrears are considerable and if at a later date, the Court has evidence that he has found employment or is working and he is indicating that he is not working, then the Court may be in a position to make a finding that he has the ability to pay the maintenance and it is wilfully neglecting to pay the maintenance. If that turns out to be the case, then he is opening himself up to a possible committal to prison for contempt of court, especially as the current order has a penal notice attached."

12. The mother again felt compelled to issue a further Summons for arrears and enforcement on 1 February 2016. By the time that the Summons came on before this Court on 15



March 2016, the arrears had increased and were assessed at \$12,415. As the father had only been served with the Summons on the previous day, the matter was adjourned to 7 April 2016 and he was directed to file a detailed affidavit by or on 4 April 2016.

13. When the matter came on before this Court on 7 April 2016, I noted that the father had breached the directions because he had failed to file an affidavit. His excuse was that he had been unable to obtain proper evidence to verify his employment details (something which he has again failed to do for today's hearing, despite being told at the hearing on 18 November 2021 that he needed to provide payslips or a letter from his employers (setting out his monthly salary payments). This excuse was not accepted by the Court. This Court ordered that he pay maintenance of \$240 per month per child. A penal notice was attached to the requirement to pay ongoing maintenance. At the hearing, this Court made a finding that the father had the ability to make greater payments than the reduced and inconsistent payments that he had been making and that he had wilfully neglected to make the ordered payments. The Court also made an order committing the father to prison for 14 days for his breaches of the orders, but suspended the committal on the condition that it would be reactivated if a single payment was not made within 28 days of the due date. This Court indicated that there would be a review date and that the failure of the father to attend that hearing could result in a bench warrant for his arrest being issued.

14. On 13 August 2018, the mother issued yet a further Summons for enforcement. That Summons came on before Mangatal J on 7 September 2018 and she assessed the arrears at \$14,125. Mangatal J then adjourned the enforcement proceedings *sine die*. It appears that the suspended committal order was not brought to the Learned Judge's attention despite the fact that the arrears had increased and the fact that the father had missed payments.



15. The matter then went quiet, until the mother issued a Summons on 20 January 2021 seeking to enforce the maintenance arrears that had accrued from non-compliance with the April 2016 order. She asked that the payment of the arrears be cleared by incremental payments from the father. The mother also applied for an order that the father pay a half payment of \$350 towards AAB's special education tuition at Hope Academy. A School Fees Order is a type of child maintenance order² and is therefore a variation of the order and the need for the child to attend that school is clearly a change of circumstances to the position that existed at the time of the April 2016 order.
16. That Summons came on before this Court on the 7 May 2021 and I provisionally assessed arrears as of the end of April 2021 at \$22,090. It was a provisional assessment, as the father did not accept the arrears figure in the arrears print out which had been provided to the Court and to the parties by the Court Funds Office. He was therefore given an opportunity to challenge the figure, and the Court directed that he was to make a prompt appointment with the Court Funds Office to discuss the level of arrears. He was told that he should take all of his payments receipts to that meeting if he sought to challenge the figure. Importantly, he was warned that if he did not arrange that meeting, then the arrears figure would be assessed as being the one shown in the printout, namely \$22,090. An attachment of earnings order was made to GEL Electrical in the sum of \$480 per month and the arrears enforcement hearing was adjourned. Directions were given to the parties requiring them to file updating affidavits setting out their income and outgoings before the hearing.
17. The parties did not seek to have the matter listed and it drifted until, on 5 November 2021, when the mother filed a Summons (which is the one currently before me) with a

² Grand Court case *RE v CD* Fam 119 of 2021, delivered on 18 February 2016, Williams J.



supporting affidavit. In that Summons she sought the same variation and enforcement orders contained in her Summons of 20 January 2021.

18. The Summons came on before me 18 November 2021 when I adjourned the hearing to today's date. As the father had failed to take the opportunity to challenge the arrears by fixing an appointment with the Court Funds Office, I therefore ordered that the arrears remained assessed at \$22,090 as of the end of April 2021. The Father was directed to file a completed Statement of Means form by noon on 23 November 2021, which he did. He was told to attach documentary proof from his employer to verify his income. Importantly, he was also told that he should provide the income details of his partner with whom he lives. He was informed that the purpose of this was not so that she should pay any child maintenance, but for the Court to determine what proportion of their household outgoings she should pay, which could in turn free up some of the father's income to pay towards maintenance and/or arrears. He was told that if he failed to provide that information, then the Court may have to infer that she could make a greater contribution to his household.
19. At this hearing the parties appeared in parties before me in Chambers. I have considered the affidavits and statement of means forms which have been filed. In addition to that evidence, I have received oral evidence from the parties.

Parties' Positions

20. The mother's position is that the time has now arrived for the father to make payments towards the aged arrears, something that he has failed to do over a large number of years, ever since the arrears started to accrue. She recognises that the father does not have the funds to make significant inroads into the arrears and suggests that payments are made



- incrementally. She rather conservatively suggested that the figure be at least \$100 per month, which would mean that it would take around 18 years for the arrears to be cleared.
21. The father indicated that he was unable to make any payment towards the arrears. His only 'proposal' was that he might be able to start paying towards the arrears once the maintenance orders expired due to the then ages of the children.
 22. The Court informed the father that his suggestion about delayed payment was not feasible, because at least payment of some of the child maintenance arrears are needed for the children at this time and that he was in effect treating the arrears as an interest-free loan. I am of the firm view that the time has come and that it is long overdue for the father to start to make payments in relation to the arrears and that he will have to adjust his finances accordingly.
 23. The mother's position is that the father should also be making some contribution towards AAB's School. The fees are currently in the region of \$735 and she says that all that she is seeking is at least \$100 from the father.
 24. The father again says that he is unable to make any contribution to the school fees. In fact his case is that, despite inflation since April 2016, the maintenance level should remain at the same as it was then. As mentioned, he could not come up with any informed suggestion about an alternative school for AAB which could in any way address the special educational needs. When asked, he felt unable to comment on what the effect on AAB would be if she had to leave Hope Academy, save to say that the School has said that she was improving. When it was suggested to him that the improvement was due to the special attention AAB was receiving as the School, he did not reply.



25. As I have already indicated, I am satisfied that it is in AAB's best interests to remain at Hope Academy at this stage. It is simply not equitable that the mother, who is on a similar salary to the father, should be solely responsible for those fees. This is a case in which the father should make a contribution via a school fees order.
26. At the end of the hearing I informed the parties that I order:
- (i) a variation of the order of 7 April 2016 by adding school fees order for the father to pay \$100 per month whilst AAB remains at Hope Academy;
 - (ii) the father do pay \$100 per month to reduce the arrears which have been assessed at being \$22,090 as of the end of April 2021;
 - (iii) that both of these payments would be by an increased attachment of earnings order;
and
 - (iv) that paragraph 4 of the order dated 7 April 2016 (the suspended committal order) be discharged.
27. The father then indicated that he disagreed with the terms of the order and asked whether he should see an attorney. I informed him that he was entitled to seek legal advice. I reiterated to him that the order I made was a very generous order, that the arrears would not be repaid for over 18 years and that the school fees order was needed to ensure that AAB received the education assistance she obviously required. It was made very clear to the father who continued to express his disagreement with the order that this was the order that I had made, that I would not be changing that order and that he was free to seek legal advice concerning the same.
28. This is the reserved judgement from the hearing.



The Law

29. As the maintenance order in these proceedings was made during the divorce proceedings, the Law pertaining to the making of periodical payment orders is governed by s.19 of the Matrimonial Causes Act (“the Act”), which reads as follows:

“In dealing with all ancillary matters arising under this Law the court should have regard first of all to the best interests of any children of the marriage and thereafter to the responsibilities and financial and other resources, actual and potential earning power and deserts of the parties.” [My emphasis by underlining].

30. Sections 19 and 21 of the Law gives the Court a wide discretion when it comes to financial provision and any awards made to the parties. This includes when varying an order.

31. The Courts in the Cayman Islands, in deciding whether to exercise its powers under s.21 and, if so, in what manner has, when considering what is fair in all the circumstances of the case, traditionally had regard not only to the matters set out in s.19, but also to the relevant factors which set out in s.25(1) of the Matrimonial Causes Act 1973, and then in s.3 of the Matrimonial and Family Proceedings Act 1984 in England and Wales.³ The relevant factors to be considered in this matter include and are not limited to:

- (i) The income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;
- (ii) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

³ Doak v Doak and Riley [2002] CILR 224, [17], [21], [22], Wight v Wight CICA 6 of 2006 [62] (“Wight”), Wood v Wood [2009] CILR 255, [12] and McTaggart v McTaggart (supra) [39].



- (iii) The deserts of the parties, including contributions made by each of the parties to the welfare of the family and any contribution made by looking after the home and caring for the family; and
- (iv) Whether there has been any change of circumstances since the making of the order in April 2016.

The Parties' Income and Outgoings

32. The father set out his income and outgoings in his Statement of Means Form and attached Monthly Expenses Schedule. He states that his net income is \$2,160 per month, but he failed to provide any documentary evidence to verify that. He did not provide me with any details about his partner's income. He indicated that a lawyer had told her/him that she did not need to provide the information to this Court and that it was private. His partner was clearly aware of these proceedings, as she is the person who emailed the father's Statement of Means to the Family Proceedings Unit. He stated that the arrangement between them was that they contributed equally to the running expenses of their household. He informed the Court that she was employed as an Administrative Assistant at Cayman Islands Anti-Money Laundering Unit and he vaguely stated that her salary was similar to his salary. I am not willing to accept his assertion about the level of her salary, save to have in mind that it is at least \$2,160 net per month.
33. The father has disclosed outgoings, including the current maintenance order, totalling \$2,095.52. These figures include what he states to be a 50% contribution to the household expenses. Even on his own figures, he has a disposable income of \$64.48.



34. I note that the father has three other dependent children. It appears one of the children was conceived around the time that AAB was conceived when he was still married to the mother and that the two youngest children were conceived after separation from the mother. I note that he has had these additional children, despite saying that he was unable to support the two children from the marriage due to his financial circumstances. I accept that he has the responsibility to contribute towards the maintenance of those three additional children (two of which he pays \$150 per month in maintenance and for the third one he pays \$200 per month maintenance) and I have regard to that ongoing financial responsibility. However, I am also aware of the principles stated by Slade LJ in *R v R* [1988] 1 FLR 89, namely that a person having an obligation to maintain his children is under an obligation to order his financial affairs with due regard to his responsibility to pay reasonable maintenance for his children and meet his reasonable financial obligations. Fathers who have children, arguably more so if in in marriage, only to later say that their financial position does not enable them to properly support those children, should be responsible and act carefully and think maturely before bringing more dependent children into the world.
35. The mother's net income, as verified by her payslip, is \$2,111 per month, a similar income to that earned by the father. In addition, she currently receives \$480 by the attachment of earning order from the father for the maintenance of the two children. Her husband works installing windows and doors. The mother states that his income is \$2,720 per month. This means that the total income coming into the household is \$5,436. They also have a one-year-old child. The mother and her husband are, of course, responsible for the cost of bringing up that child. The father should not expect the mother's husband to take over the responsibility for bringing up AB and AAB, although her husband's



income can be taken into account when considering what contribution he could make to the household expenses and then in turn what proportion of her income may be freed up to meet the needs of AB and AAB.

36. The mother and her husband live rent free in one of her grandmother's properties. It is a two bedroom property, and the grandmother has kindly indicated to them that they can live there with the children for as long as they wish. The mother's personal outgoings from her evidence total \$2,824. This is more than her income. Although referred to as personal outgoings, the figure includes certain expenses which have an element of child costs, for instance the 'roof over a head expenses' including utilities and groceries. The mother's outgoings specifically for the two children total \$1,672.91, and this includes the \$735 per term school fees for Hope Academy. The total outgoings are \$4,496.91 in the mother's household, but these do not include personal expenses which the mother's husband has, and if they are taken into account there is none or minimal disposable family income at the end of the month.

Conclusions

37. I am satisfied that at the very least, not including the roof over the head expenses, the children's care requires an outlay of at the very least \$1,672. 91 per month. The father is currently contributing only \$480 to that total whereas the mother is paying \$1,192.91 plus the other part-child related expenses for the household. This is over double what the father pays and that is inequitable, particularly when they have very similar incomes. The mother is only able to do this as she lives in a rent-free property, but she has still had to take out a personal loan to make ends meet. I accept that the father has to pay rent (he says of around \$750 per month) which is an extra burden on his income.



38. The principle is that both parents have a responsibility to financially support their children. I accept that the mother has shouldered the majority of the financial burden for supporting the children hitherto. I have regard to the unacceptable level of arrears which have only risen and never been reduced by the father over many years as well as the father's unattractive attitude to the same. I have regard to the conservative level of the incremental payment towards the arrears and the level of the contribution to the school fees order that the mother says she would be willing accept, namely only \$100/month for each. When I consider that and all of the factors in s.19 of the Law, I have the overarching principle that the children's interest should be first at the forefront of my mind. I have considered the parties' income, earning capacity, property and other financial resources, financial needs, obligations and responsibilities now and in the foreseeable future.
39. I am satisfied that , without even factoring in the rise in the cost of living and of bringing up these children as they get older since April 2016, which in itself would likely amount to a change of circumstances, the fact that AAB must attend Hope Academy amounts to a change of circumstances and justifies the making of a school fees contribution order
40. **Taking into account the above, I order:**
- (i) a variation of the order of 7 April 2016, by adding a school fees order for the father to pay \$100 per month whilst AAB still attends Hope Academy;
 - (ii) the father to pay \$100 per month towards the arrears (which have been assessed at being \$22,090 as of the end of April 2021) until they are cleared or further order of the Court;

- (iii) that both of these payments are to be made by an increased attachment of earnings order which, for the avoidance of doubt, will be in addition to the current \$480 per month attached maintenance order; and
- (iv) that paragraph 4 of the Order dated 7 April 2016 (the suspended Committal Order) be discharged.

A handwritten signature in blue ink, consisting of a large, stylized loop at the top, followed by a series of smaller loops and a long horizontal stroke extending to the right.

Honourable Mr. Justice Richard Williams
Judge of the Grand Court