

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

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5 **CAUSE NO. D 152 of 2006**

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7 **BETWEEN:**

8 **FLORIBERTO REGO RIVERS**

9
10 **PETITIONER**

11 **AND:**

12 **YANEIXIS RIBERO ALMAGUER**

13 **RESPONDENT**

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17 **Appearances:**

Petitioner in Person

18 **Ms Sonia Bush instructed by Sonia Bush &**
19 **Associates for the Respondent**
20 **Respondent present**

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22 **Before:**

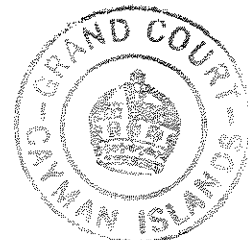
The Hon. Mr. Justice Patrick Brooks (Actg.)

23 **Heard:**

17th July 2014

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25 **EX TEMPORE JUDGMENT**
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- 27 1. This is an application by the Respondent Yaneixis Ribero Almaguer for an
28 order declaring the amount of maintenance which was agreed between
29 herself and the Petitioner Floriberto Rego Rivers in February 2007. The
30 agreement required, among other things, the petitioner to pay the sum of
31 \$75.00 per week for the maintenance of their child.



- 1 2. The consent order encapsulating their agreement was not filed until a year
2 after it was made. The respondent applied for an order for the payment of
3 arrears of maintenance under that order, but when the application came
4 before Henderson J on 30 September 2013, he set the order aside and he
5 made other orders in its place. The reasons for his orders are not recorded,
6 but Ms Bush for the Respondent submitted that it was due to the uncertainty
7 concerning the date and effect of the consent order.
- 8 3. One of the orders that Henderson J made was that the petitioner should pay
9 \$75.00 per week for the maintenance of the child. The payments were
10 ordered to be made through the Court Funds Office. Henderson J also
11 ordered that the then existing application for maintenance arrears should
12 continue to be pursued. The Petitioner did pay some monies to the Court
13 Funds Office but it appears that he has not done so since March 2014.
- 14 4. It is difficult to reconcile the setting aside of the consent order with the order
15 that the application for the arrears of maintenance should continue. It is true
16 that an order must be obeyed until it is set aside but the setting aside would
17 normally affect the existence of the order from the outset. If it is set aside
18 from the outset then there is no order to be obeyed.



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1 5. I am prepared to find that the court would not have made in vain its order for
2 the continuation of the application in respect of the maintenance arrears.
3 The order for its continuation meant that the court intended the consent order
4 to be set aside conditionally, insofar as it allowed the maintenance aspect to
5 remain live for the purposes of the application.

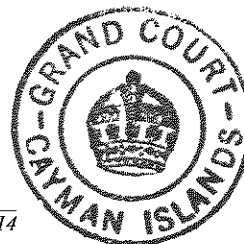
6 6. The application later came on before Williams J¹. He ordered, among other
7 things, at that time, that the Petitioner should file an affidavit in response to
8 the application, on or before 6 May 2014. The Petitioner has not done so
9 and therefore, what is before the court today is the application for the arrears
10 and the respondent's more recent affidavits. There is also one affidavit that
11 was filed by the Petitioner prior to the hearing before Henderson J.

12 7. In her application the Respondent breaks down the amount owed according
13 to three periods, namely:

February 2007 – August 2010	\$13,875.00
September 2010 – September 2013	\$11,400.00
March 2014 – Present	\$1,125.00

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15 8. Although he contends that he has made payments in the period between
16 2007 and 2010, the Petitioner has not been able to support those contentions
17 with any independent evidence. The Respondent says that she has received
18 nothing. It is not difficult, based on the Petitioner's general approach, to
19 believe her.

¹ On the 22nd April 2014



1 9. In respect of the second period, there is some indication that the Petitioner
2 did pay some maintenance money directly to the child who, at the beginning
3 of that period would have just turned ten (10) years old. Although such a
4 method of payment is unacceptable, it is incredible that the child, at that age,
5 did not report the payments to the Respondent. The payments made were
6 \$50.00 per fortnight. The Petitioner should be credited with those sums.
7 They are said to amount to \$3,800.00 and would therefore leave a balance of
8 \$7,600.00.

9 10. Ms Bush indicates that the sum owed since March 2014 to 10 July 2014 is
10 \$1,125.00 being 15 weeks at \$75.00 per week. The documents provided by
11 the Court Funds Office, indicating that the Petitioner has paid nothing since
12 March, were provided to the parties.

13 11. Based on the evidence before the court, it makes the following findings of
14 fact:

- 15 1. The Petitioner is in arrears of maintenance payments for the
16 period February 2007 to August 2010 in the sum of \$13,875.00;
- 17 2. The Petitioner is in arrears of maintenance payments for the
18 period September 2010 to September 2013 in the sum of
19 \$7,600.00;
- 20 3. The Petitioner is in arrears of maintenance payments for the
21 period April 2014 to 15 July 2014 in the sum of \$1,125.00;
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1 12. On those findings, the orders are as follows:

2 1. The Petitioner is in arrears of maintenance payments for the
3 period February 2007 to 14 July 2014 in the sum of \$22,600.00;

4 2. The sum shall be paid by monthly instalments of \$1,880.00 until
5 it shall have been completely paid off. The payments shall be
6 made on the 1st day of each month and the first payment shall be
7 made on 1st August 2014;

8 3. The order for the payment of weekly maintenance made by
9 Williams J on 22 April 2014 shall continue.

10 4. No order as to costs.

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15 **Dated this the 17th day of July 2014**

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**Honourable Mr. Justice Patrick Brooks
Acting Judge of the Grand Court**

