

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**

2 **FAMILY DIVISION**



3 **CAUSE NO. D0063 OF 2004**

4  
5  
6 **BETWEEN GINA McLAUGHLIN HOWARD (nee MARTINEZ)**

7 **PETITIONER**

8 **AND RUDOLFO ESTEVAN MARTINEZ**

9 **RESPONDENT**

10

11 *Appearances:*

12 *The Respondent/Applicant appearing in person via Zoom*

13 *The Petitioner/Respondent represented by Mr. Morris Garcia*

14

15

**RULING AMENDED**

16 The parties were married on the 15<sup>th</sup> day of May 1996 and the marriage was  
17 formally dissolved on 9<sup>th</sup> September 2008. There were three children of the  
18 marriage: Gilda Martinez born on October 24, 1995, Monica Martinez born  
19 on February 28, 1997 and Keyanna Martinez born May 22, 2000.

20

1 By Consent Order dated August 14, 2008 both parents were granted joint  
2 custody of all three children. The Petitioner/Respondent was granted daily  
3 care and control of the eldest child Gilda while the Respondent/Applicant was  
4 granted daily care and control of the other two children.

5  
6 It was also a provision of that order that the Petitioner/Respondent should  
7 pay the sum of \$300 per month in child maintenance to the  
8 Respondent/Applicant for the two children who fell under his daily care and  
9 control. Payment was to continue until the children reached the age 16 years  
10 or if they remained in full-time education, up to age 21. Other expenses for  
11 all three children were to be shared by both parties.

12  
13 By summons filed April 2014 supported by an affidavit sworn on the 11<sup>th</sup> day  
14 of April 2014 the Respondent/Applicant sought an order to enforce his claim  
15 for arrears which he alleged to have totalled \$16,500. The matter was  
16 contested by the Petitioner/Respondent who filed her own paperwork in  
17 support of her contention about payments which she had made for the  
18 children as well as her personal circumstances. The determination about  
19 what took place and the calculation of actual arrears required wading  
20 through the evidence presented by both parties.

21



1 On May 14, 2014 Mr. Justice Williams ordered that all maintenance  
2 payments were to be made to the Court Funds Office on or before the 28<sup>th</sup>  
3 day of each month, as of May 28, 2014. Prior to this, there had been no  
4 requirement that payments be made in this way.

5  
6 The application came on for hearing on August 13, 2014. Both parties  
7 appeared in person. When called upon to present his case the  
8 Respondent/Applicant stated that he no longer wished to proceed with his  
9 claim for \$16,500 in arrears. He went on to state that he would be content  
10 with the Petitioner/Respondent paying the sum of \$300 per month to the  
11 Court Funds office and he acknowledged that she had started to do this.  
12 Consequently the application for arrears was dismissed.

13  
14 Thereafter by summons filed February 15, 2017 the Respondent/Applicant  
15 again filed an application seeking arrears. He claimed the sum of \$22,200 as  
16 the amount owed as at February 7, 2017. This sum included the previously  
17 waived arrears which he calculated to be \$16,500. The new application also  
18 sought an increase of maintenance to \$600 per month.

19

20



1 The Respondent/Applicant did not deny the record of proceedings reflected  
2 in the Minute of Order dated August 13, 2014. In his supporting affidavit, in  
3 reference to the day in question, he stated the following:

4 *"the Respondent was uneasy, tense, and impatient and he was late for*  
5 *work and his employer was unaware of his court date. That the*  
6 *Respondent satisfied with the order of \$300 per month and did not*  
7 *pursue the arrears because he did not want to jeopardize his*  
8 *employment."*

9  
10 His employment concerns on the date in question were not raised in Court  
11 by the Respondent/Applicant and indeed he does not claim that they were.

12  
13 The Petitioner/Respondent asserted that it would be unjust for her to be  
14 forced to pay funds that the Respondent/Applicant had previously waived.  
15 She acknowledged that she had not always made the maintenance  
16 payments as she had been ordered to do. She cited her personal  
17 circumstances as an explanation for this but she also stated that she had  
18 made payments which had benefited the children of the marriage.



1 She asserted that the youngest child of the marriage lived with her between  
2 June 2014 and April 2015 and that during that period; she was the sole  
3 provider of all her immediate expenses. She cited a monthly allowance that  
4 she gave to the child and also plane tickets which she had purchased for her  
5 to travel between the Cayman Islands and the USA. These funds she wished  
6 to have deducted from her arrears.

7  
8 She also cited her current salary and expenses which also covers children  
9 which she has had since the divorce. She denied that she was in a position  
10 to pay double the amount of maintenance previously ordered.

11  
12 There is a difficulty in quantifying exactly how much has been paid by the  
13 Petitioner/Respondent. She made reference in her affidavit to funds which  
14 she had wired to the Respondent/Applicant in the USA. In his submissions he  
15 acknowledged that money had been sent but indicated that he only  
16 benefited directly from a payment of US \$300 sent in April 2017. He stated  
17 that all the rest of the money was received by him but was used for the  
18 benefit of the second oldest child, Monica, due to her financial  
19 circumstances.

20



1 The first concern is the sum of \$16,500 which had been owed as of April  
2 2014. This sum having previously been waived, should the  
3 Respondent/Applicant now be allowed to reclaim it?

4  
5 In the family case of **A.T. v T.T.** delivered on the 31<sup>st</sup> day of March 2014 the  
6 Grand Court rejected the notion that the Courts in the Cayman Islands could  
7 of their own motion waive arrears that had accrued over several years. That  
8 case posited that "*the obligation to pay maintenance is not one owed in*  
9 *personam to the respondent. It is an obligation owed for the welfare of the*  
10 *minor children of the marriage*".

11  
12 There can be no doubt that the Petitioner/Respondent is obligated to pay  
13 arrears owed. Additionally, there can be no doubt that in August 2014, the  
14 Respondent/Applicant had a right to pursue arrears which were owed up to  
15 April 2014. It should be noted that because of his actions at Court on August  
16 13, 2014, the Court never went through the exercise of determining, from  
17 the evidence, how much was actually owed in arrears.

18  
19 A distinction must be made between the instant case and the case of **A.T. v**  
20 **T.T.** The passage of time between the date that the Respondent/Applicant  
21 waived his claim for arrears and the date when he sought to file for them  
22 again must be relevant. There was a passage of time of 2½ years.



1 It is not just for the Petitioner/Respondent to be required to meet a claim for  
2 arrears up to April 2014 after; she had been assured by the  
3 Respondent/Applicant she would not have to do so. She was entitled to rely  
4 on this assurance.

5  
6 Factored into this finding is the admission by the Respondent/Applicant that  
7 even while she was not paying all that she should have, since the hearing in  
8 August 2014, the Petitioner/Respondent has been contributing financially  
9 towards the children of the marriage. She has not merely been refusing to  
10 pay any money for the children.

11  
12 He only disputed that the shopping trip that the Petitioner/Respondent  
13 referred to, had occurred. Further, if he used funds sent by the  
14 Petitioner/Respondent for the benefit of a child who was no longer covered  
15 by the Court Order; that cannot be held against the Petitioner/Respondent.

16  
17 I find that the Respondent/Applicant is bound by his waiver of any arrears  
18 owed up to April 2014 and the Petitioner/Respondent is not liable to pay  
19 this.



1 The Petitioner/Respondent is liable for payments from May 2014. Any  
2 arrears must be calculated from this date. While this application was  
3 predicated on that which was owed up to February 7, 2017, it is noted that  
4 the Respondent/Applicant is entitled to file a further claim for any arrears  
5 owed thereafter.

6  
7 A rough calculation of that which would have been liable to be paid up to the  
8 filing of the most recent application is:

10	May – December 2014 (8 months)	- \$ 2,400;
11	<del>January – December 2014 (12 months)</del>	<del>- \$3,600;</del>
12	January – December 2015 (12 months)	- \$3,600;
13	January – December 2016 (12 months)	- \$3,600;
14	January – February 2017 (2 months)	- \$ 600.
15		<u>\$13,800</u>
16		\$10,200

17 The amount which has actually been paid is still difficult to calculate. The  
18 paperwork generated by the Court Funds Office shows payments from May  
19 2014 to April 2015 in the quantum \$3,625.



1 The Petitioner/Respondent seeks credit for other funds expended for the  
2 youngest child of the marriage, Keyanna. Additionally, it is her assertion that  
3 the Respondent/Applicant agreed that if she paid for airline tickets for  
4 Keyanna she need not pay maintenance.

5  
6 Apart from that which was highlighted, her claims of expenditure were not  
7 denied by the Respondent/Applicant. However, by paying other than as  
8 directed by the Court, the Petitioner/Respondent acted to her detriment.  
9 There is no accurate record concerning her expenditure.

10  
11 The Petitioner/Respondent asserted that Keyanna lived with her for ten  
12 months and she bore all of her expenses. I accepted this but her financial  
13 claims are hard to prove. She claimed that she gave the child an allowance  
14 of \$150 per month but I cannot accept that figure without more. As such I  
15 cannot credit this figure to her. Exhibited to her affidavit is a receipt from  
16 Triple C School for \$788 which is somewhat unclear. I accept that this is a  
17 part of her expenses but I cannot attribute it as being for Keyanna's benefit.

18  
19 The Respondent /Applicant did not dispute the assertion that Keyanna lived  
20 with her mother between June 2014 and April 2015.

21



1 The Petitioner/Respondent is entitled to credit for that period. While the sum  
2 of \$300 per month was meant to benefit both Keyanna and her older sister  
3 Monica, in June 2014 Monica would have been 17 years of age. There is  
4 nothing in the evidence to show that she had been in full time education at  
5 that point in time and as such, entitled to a share of the Court ordered  
6 maintenance payments.

7  
8 Consequently the entire sum is viewed as having benefitted Keyanna and  
9 will be credited to the Petitioner/Respondent for a deduction in arrears of  
10 \$3,000.

11  
12 Using her receipts I credit the Petitioner/Respondent for airline tickets for  
13 Keyanna in the sums of US \$577.20 (August 2015) and US \$714.49  
14 (December 2016). Additionally, the following funds were wired to the  
15 Respondent/Applicant: US \$150 via Western Union in February 2017 and US  
16 \$300.90 via MoneyGram in April 2017. I also allow these sums as  
17 deductions. These receipts total US \$1,742.59 or CI \$1,394.08.

18  
19 All of the allowed deductions total CI \$4,394.08. Added to payments made  
20 to the Court Funds Office, the Petitioner/Respondent is credited with  
21 payments of CI \$8,019.08. This will be deducted from the arrears of ~~\$13,~~  
22 ~~300~~ \$10,200 owed as at February 7, 2017.



1 The arrears owed by the Petitioner/Respondent as at February 7, 2017 are  
2 ~~\$5,780.92~~ \$2,180.92.

3  
4 Keyanna is 17 years of age but she appears to still be in full time education.  
5 Under the terms of the Consent Order, the Petitioner/Respondent is  
6 obligated to continue paying maintenance for her at this time.

7  
8 With reference to the application for an increase in maintenance payments.

9  
10 The Petitioner/Respondent produced a letter from her employer establishing  
11 that she is paid \$1,700 per month. She also listed her monthly expenses.  
12 There is little money with which to manoeuvre. I cannot order her to pay  
13 \$600 per month from this salary for maintenance for Keyanna. I also cannot  
14 increase the maintenance payments for the child. At best I can only order  
15 that the Petitioner/Respondent pay an additional sum of \$100.00 per month  
16 towards the arrears of ~~\$5,780.92~~ \$2,180.92



1 The Petitioner/Respondent fell into arrears and the Respondent/Applicant is  
2 entitled to an order enforcing the Court Order for payment. An Attachment  
3 of Earnings Order is made with effect from the 28<sup>th</sup> November 2017. The  
4 Normal Deduction Rate is \$400 per month being the regular maintenance  
5 payment of \$300 per month with the additional sum of \$100 going towards  
6 arrears of ~~\$5,780.92~~ \$2,180.92 until that sum is paid off. Thereafter the  
7 Normal Deduction Rate will be reduced to \$300 per month.

8

9 Each party is ordered to bear his/her own costs.

10

11

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13

14

*Nova Hall*



15

16 Nova Hall  
17 Acting Judge of the Grand Court  
18 20<sup>th</sup> November 2017.

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