IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

Cause No.: FAM 97 OF 2016

BETWEEN

JT

Petitioner/Applicant

AND

MT

Respondent

IN CHAMBERS

Appearances: Both parties in person

Before: **The Hon. Justice Margaret Ramsay-Hale**

Heard: **17 January 2020, 5 February 2020, 24 February 2020**

Ruling Delivered **24 February 2020**

HEADNOTE

Arrears of Maintenance – Persistent failure to discharge responsibility under a court order to make periodical payments

RULING

1. By Consent Order dated 15 August 2017, the Respondent agreed to pay directly into the Petitioner's nominated bank account the sum of CI$300 as and for maintenance of the child of the marriage, a daughter now aged 14 years, commencing on 1 August 2017. The Order also provided that all educational expenses be shared equally between the parties.

2. During the course of the marriage, the parties borrowed a substantial amount of money. Monthly payments of $250 to service that loan are garnished from the Petitioner's salary. The Court

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ordered that the Respondent pay the further sum of CI$125, representing his half share of the loan obligation, directly into the Petitioner's nominated bank account.

3. The full sum which should have been paid to the wife as at 1 January 2020 is $12,235. As so often happens, the parties did not abide by the specific terms of the Order: the Petitioner failed to nominate an account for the payments and agreed by conduct to receive monies directly from the Respondent. The Respondent paid divers sums on divers times of the month to either the Petitioner or his daughter, as and when was convenient, instead of paying $425 on the 1st of every month as directed by the Court.

4. On 17 January 2020, the Petitioner appeared on her application for arrears of maintenance and for an order garnishing the Respondent's salary or such other relief as the Court deemed fit. The Respondent was absent but, the Court, on being satisfied that he was in breach of the Order to pay directly into the Petitioner's bank account, made an attachment of earnings order to secure future payments of $425 to the Petitioner.

5. The hearing of the application for arrears was adjourned to the 5th February 2020.

The Evidence

6. The upshot of the casual arrangement for the payment and receipt of the monies ordered by the Court is that, on the Petitioner's application for arrears, there are no receipts and scant other records of payment available for consideration by the Court which has the invidious task of trying to ascertain whether, and by how much, the Respondent is in arrears of payment. The Court had only the parties' own recollection of what monies had been paid pursuant to the Order in seeking to ascertain the arrears.

7. The Petitioner's evidence was that, since the date of the Order, the Respondent had only given her the sum of, at most, $1000, in varying amounts of $50, $100 and $150. She acknowledged receipt, in the course of the hearing of a further $125 in November 2019 of last year, bringing the sum she acknowledges receiving, and being willing to give the Respondent credit for, to $1,125.

8. In his evidence, the Respondent accepted that he had never given the Petitioner the sum of $425 in any month since the Order was made. He asserted, however, that he gave her $400 per month

because, *"that is what we discuss, because from what I was making $400 is what I could contribute"*. His assertion begs the question why, in the circumstances, he signed a Consent Order promising to pay $425.

9. It appears from his testimony that he rarely gave the Petitioner money directly, preferring to give money to their daughter instead. It also became clear that he would only pay money if asked for it by the Petitioner - or by the child on her mother's behalf - rather than pay on a scheduled basis, whether once a month or whenever he got his fortnightly pay. He could not say how often he gave the Petitioner money in this haphazard way but maintained that he gave her $400 a month.

10. His unchallenged evidence was that he regularly gave his daughter lunch money in the sum of $200 per month and took her shopping for groceries on occasion. He also stated that he purchased her uniforms [1] and otherwise outfitted her for school in every year. The Petitioner asserts that these expenses had been shared until September 2019.

11. The Respondent also paid for extra lessons when the child failed to make significant progress in maths. The extra lessons initially cost $800 per month, commencing in the summer of 2018. The child attended at those lessons for two months after which time, the Respondent found a more reasonably priced tutor whose monthly fees, from the few records produced to the Court[2], averaged $570 per month. She attended at extra lessons until August 2019, for a total period of 1 year and 3 months.

12. The Order required the parties to share the child's educational expenses but the Respondent decided that he would pay the costs rather than ask the Petitioner *"to go 50:50."* Once the tutor was engaged, however, the Respondent ceased making any maintenance payments. His evidence was,

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"I stopped paying the maintenance but continued to pay lunch money and give support whenever I can because there was no 'take home' for me, nothing left in my salary for anything else after paying the tutoring."

[1] Exhibit 1
[2] Exhibit 2

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13. The wife contends that she did not agree that, because the Respondent had engaged a tutor, the child that maintenance payments should cease. Rather, as she put to him in cross-examination, the Respondent had said he *"would take care of it."* The Respondent's answer in response was he what he'd said was that that he would *"pay it and not ask to go 50:50."*

14. With respect to the loan account, the Respondent's evidence is that he had bought a car with part of the proceeds from the monies they had borrowed. He received a cheque for $2,600 from the insurance company when the car was written off in a crash and paid down the balance on their joint credit card and paid the sum of $1,330 down on the loan to reduce the outstanding balance.

Findings of Fact

The Order for Maintenance

15. Having considered the evidence, I accept and find that up to the summer of 2018, that the Respondent paid some money to the Petitioner as and for maintenance from time to time for which she is prepared to give him credit. I reject the Respondent's evidence that he gave the Petitioner $400 per month at any time after the Order was made as the Petitioner, whose evidence I prefer, strongly denies this. In any event, in the summer of 2018, when he engaged a tutor for the child, the Respondent's evidence is that he ceased to pay maintenance though he continued to give the child lunch money and contributed to her by taking her shopping for groceries and other incidentals.

16. In the 10 months between the 1 August 2017 when the first payment should have been made and June 2018 when the Respondent engaged the first tutor, the Petitioner said that she received $1,000 as and for maintenance. That represents an average rate of $100 a month. I accept her evidence because, while I am satisfied that the Respondent spent much more than that, it was in the form of direct payments to the daughter for lunch money and other necessaries and not payments to the Petitioner. I give the Respondent credit for that $1,000 and for the additional sum of $125 which the Petitioner agreed she received in November 2019.

17. The Respondent submits that the monies paid for the tutor should be taken into account in computing the arrears. The Order requires that the parties share the child's educational expenses, and it is accepted that the child needed those lessons, but it is clear that the Petitioner was not aware that the Respondent intended to cease paying any monies towards the maintenance of the

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child as a result. She believed he was going to *"take care of it."* Hs own evidence is in much the same terms as he says he told her he would *"deal with it rather than ask her to go 50:50."* She also said, and I accept that the Respondent did not discuss the choice of tutor or the costs of the lessons with her and that all arrangements for attending at classes were made between the Respondent and the daughter. Had she realised that the Respondent would cease paying all maintenance, she might have decided to forgo those lessons or sought to find a cheaper alternative.

18. Had the Petitioner not agreed, in the course of the hearing, to give the Respondent credit for the extra lessons, I would hold that the arrears should not be discounted by payments he made at his election, without her express agreement that he should cease paying the sums due for maintenance for the duration.

19. The Respondent was unsure of what month the extra lessons commenced, but said in evidence that the child attended those lessons for 15 months, which would be from 1 June 2018 to September 2019. Although the Petitioner challenged this assertion, I accept his evidence given that all the arrangements had been made, on the Petitioner's evidence, with the daughter and had not been discussed with her.

20. I therefore calculate the arrears of maintenance from 1 August 2017 to 1 May 2018 at $2,000 ($3,000 - $1,000) and from 1 October 2019 to 1 January 2020 at $1,075 (1,200 - $125)[3] for a total of $3075.

21. The receipted invoice for school uniforms is a mere $100 and no other evidence has been led as to the expenses of fitting out the child for school. I make no allowance for any sums so paid in calculating the arrears.

22. Given the Respondent's clear preference for making direct payments to the child, I would remind him that an Order for child maintenance seeks to secure, for the custodial parent, the periodical payment of a sum of money to defray the costs of providing a home for the child, pay for food and other miscellaneous outgoings including costs relating to grooming and personal hygiene (which for a teenage girl are rather higher than a boy's), regular clothing, school outings, outings with friends and the host of small expenses related to child rearing. A monthly sum of $300 is not

[3] Maintenance to be paid one month in advance commencing 1 August 2017

a lot of money and the responsibility of a father to assist with defraying those costs cannot be met by providing lunch money, the exceptional shopping trip overseas or the occasional trip to the grocery store. Of course all such gestures are appreciated, but they are no less than one would expect of a father and they cannot and do not extinguish the obligation to contribute towards the child's ordinary expenses, for which the custodial parent is otherwise responsible, by paying the sums due under an Order for maintenance.

23. In ***Prest v Prest [2015] EWCA Civ 714*** this principle was affirmed by the English Court of Appeal which stated at para69,

> *"It cannot be acceptable for a husband persistently to fail to discharge his responsibility under a court order to make periodical payments, whilst at the same time choosing to make payments on his own terms ... If the court were to acquiesce and to condone such conduct, the result might well substantially undermine the authority and reliability of orders for such payments made under the Matrimonial Causes Act 1973."*

24. Had the wife not acquiesced in the Respondent's failure to pay the sums as directed by the Court, I would hold that he owed the entire sum due under the Order.

The Loan

25. As for the sum of $1,330 paid by the Respondent directly to the Bank to reduce the principal of the loan, it was again made by the Respondent at his election without discussion with the Petitioner and I do not consider that that payment should be taken into account as meeting his obligation to pay the sum of $125 to the Petitioner's account for their monthly debt service obligation. The debt service is borne solely by the Petitioner even though it is a joint debt and she should not be required to shoulder that burden alone. His payment against the principle may redound to the benefit of both, but it does not reduce her monthly obligation to pay $250. The arrears for the loan obligation therefore stands at $3,625.

26. The Respondent's income is $2,400 per month. He is married and his wife works, so his household expenses are shared. I am satisfied and find that he can pay an additional sum of $125 per month towards the arrears which I assess at $6,700. The Respondent's evidence is that he has

started a small business enterprise. He may, at any time, pay a lump sum towards the arrears to reduce the outstanding balance and has liberty to apply to discharge this aspect of the Order when the arrears are paid.

ORDER

27. The arrears are assessed at $6,700.

28. The Attachment of Earnings order is hereby increased to $550 per month: $300 as and for maintenance, $125 to service the parties' existing debt and $125 towards the arrears.

DATED THE 24TH FEBRUARY 2020

THE HON. JUSTICE MARGARET RAMSAY-HALE
JUDGE OF THE GRAND COURT