

On June 11th, 2010, the Decree Nisi dissolving marriage between the Parties was pronounced, and on October 8th, 2010, the said Decree was made final and absolute, and the marriage was thereby dissolved on the basis of the Respondent's adultery.

The Petitioner was awarded custody of the only minor child of the marriage at that time, David Rian Vasquez.

2. On October 2010, the Petitioner filed a Petition in the Supreme Court of Belize in which the following prayers were sought:

- i. That the Honorable Court Orders the Respondent to pay maintenance to her for life in the manner to which she has been accustomed, or until further Order of the Court;
- ii. That this Honorable Court Orders that the Petitioner receive an equitable share of the retirement fund at Neuberger Berman Inc. which is in the name of Leo Francis Vasquez
- iii. That this Honorable Court Orders the Respondent to pay maintenance and education costs for their two children, namely, Arielle Kaitlyn and David Rian, for such time as they complete their education;
- iv. That the Respondent bears the costs of this petition;
- v. That the Respondent reimburses Petitioner for all Medical Expenses in the sum of \$978.40 as well as the remaining balance owed to Wachovia Bank in the sum of \$381.32 USD plus finance charges along with the \$350.00 USD plus finance charges that was paid by the Petitioner;
- vi. That the Respondent reimburses the sum of \$4,300.00 USD to Eric and Jihad Ackerson for the personal loan;
- vii. Such other reliefs and orders as the court may deem just.

3. The children of the marriage Arielle Kaitlyn and David Rian are no longer minors undergoing a course of study or education and are duly employed in the US Military USA.

The Respondent had been paying the sum of \$2,500.00 monthly from February 2010 until June 2011 when he began to pay the sum of \$2,200.00 monthly until December 2011.

The Respondent re-married on December 2011, and the Petitioner has not re-married and remains single.

On 11th July 2013, the Court ordered the Respondent to pay interim maintenance to the Petitioner and the two children but the Respondent did not commence making payments of interim maintenance to the Petitioner until his salary was garnished by Order of the Court on October 18th, 2013.

The Respondent is currently paying the sum of \$800 per month to the Petitioner as interim maintenance which is garnished from his salary.

The Petitioner is an Office Manager at the Law Firm of Lisa M. Shoman and the Respondent was a Director of Finance at the Social Security Board and since 2014 is now the General Manager of Corporate Services at the Social Security Board.

Both Parties have disclosed their means and circumstances as well as provided details of income and expenditure in their respective affidavits.

The Petitioner has filed five affidavits in this matter, and the Respondent has filed five affidavits.

By agreement between the Parties made on October 13th, 2016, the Affidavits filed by both Parties shall constitute the evidence before the Court in this matter and both parties shall forego cross-examination.

The Order further states the Issues in this matter to be determined shall be settled by agreement between the Parties and set out in an agreed statement of facts and issues to the court on or before October 21st, 2016; and that both parties are to provide the Court with written submissions on or before November 17th, 2016.

The Issues

4. The main issues which are in contention between the Parties are those as prayed in the Petition of the Petitioner with the exception of the matter of maintenance for the children of the marriage as follows:
 - i. Whether the Respondent should be ordered to pay maintenance or alimony to the Petitioner for life in the manner to which she has been accustomed, or until further Order of the Court;
 - ii. Whether the Petitioner should receive an equitable share of the retirement fund at Neuberger Berman Inc. which is in the name of Leo Francis Vasquez;
 - iii. Whether the Respondent should be ordered to pay the costs of this Petition;
 - iv. Whether the Respondent should be ordered to reimburse the Petitioner for all Medical Expenses in the sum of \$978.00 as well as the remaining balance owed to Wachovia Bank in the sum of \$381.32USD plus finance charges along with the \$350 USD plus finance charges that was aid to the Bank by the Petitioner;
 - v. Whether the Respondent should be ordered to reimburse the sum of \$4300 to Eric and Jihad Ackerson for a personal loan;
 - vi. Such other relief and orders as the court may deem just.

5. **Issue One: Whether the Respondent should be ordered to pay maintenance or alimony to the Petitioner for life in the manner to which she has been accustomed, or until further Order of the Court**

Legal Submissions on behalf of the Petitioner on Issue One

Mr. Chebat, SC, on behalf of the Petitioner submits that the applicable law in Belize in respect of an Order by the Supreme Court of Belize by a Petitioner for Maintenance is set out very clearly in the decision of Denys Barrow J.A. in ***Vidrine v. Vidrine*** Civil Appeal No. 2 of 2010. He cites paragraph 40 of the decision which confirms that the maintenance jurisdiction of the court is contained in section 152 of the Supreme Court of Judicature Act. Subsection (1) and (2) provides that:

“152.-(1) The Court may, if it thinks fit, on any decree for divorce or nullity of marriage, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money for any term, or annual sum of money for any term, not exceeding her life, as having regard to her fortune, if any, to the ability of her husband and to the conduct of the parties, the Court may think to be reasonable, and the Court may for that purpose order that it shall be referred to the Registrar to settle and approve a proper deed or instrument, to be executed by all the necessary parties, and may, if it thinks fit, suspend the pronouncing of the decree until the deed or instrument has been duly executed.

(2) In any such case as aforesaid the Court may, if it thinks fit, by order, either in addition to or instead of an order under subsection (1), direct the husband to pay to the wife during the joint lives of the husband and wife such monthly or weekly sum for her maintenance and support as the Court may think reasonable.”

Mr. Chebat, SC, submits that the Petitioner satisfies the requirement of Rule 65 of the Matrimonial Causes Rules Chapter 91 of the Laws of Belize which makes specific provisions for how a maintenance claim may be made:

“Application for maintenance or periodic payments on a decree for dissolution or nullity of marriage shall be made in a separate petition which may be filed

anytime after decree nisi, but not later than one calendar month after Decree absolute” except by special leave of the Court. In the case at bar, the Decree Nisi was pronounced on June 11th, 2010 and was not made absolute until October 8, 2010. The Petitioner’s Petition for Maintenance and other matters was filed on October 5th, 2010 and therefore satisfies the rule.

Legal Submissions on Issue One on behalf of the Respondent

6. Mrs. Matura-Shepherd submits on behalf of the Respondent that alimony payment may be expressed as a fixed amount or as a percentage of income. Support will either be indefinite in the sense that it is for the lifetime of the wife, or end at a fixed point or amount of years. Alimony, now called “*maintenance*” has various categorizations, since as provided for by the Laws of Belize where there is a clear distinction between gross or annual sum, alimony is referred to in Section 152(1) and periodic alimony usually stated as a weekly or monthly payment commonly called “*maintenance*” referred to at Section 152(2) which provides:

“(1) The Court may, if it thinks fit, on any decree for divorce or nullity of marriage, order that the husband shall...secure to the wife such gross sum or annual sum... for any term, not exceeding natural life, as having regard to her fortune, if any, to the ability of her husband and to the conduct of the parties, the Court may think to be reasonable...”

“(2) In any such case as aforesaid the Court may, if it thinks fit, either in addition to or instead of an order under subsection (1), direct the husband to pay to the wife during the joint lives of the husband and wife such monthly or weekly sum for her maintenance and support as the Court may think reasonable...”

Mrs. Matura-Shepherd submits that from a reading of provisions the legislation views “*alimony*” as a “*gross or annual sum*” which can be ordered and that maintenance which is a weekly or monthly payment can thus be ordered in addition to gross alimony as stated in section 152(1). She also argues that while section 152(2) extends the power of the court to order a husband to pay a wife such monthly or weekly sum for her

maintenance and support as the court may think just, instead of a lump sum payment, this present application was made under section 152(1) which calls only for a gross sum or annual sum. Learned Counsel also draws the court's attention to Rules 57 to 61 of the Supreme Court of Judicature Act Cap 91 Subsidiary Laws which set out the procedures of how and when specific applications must be made. She emphasizes Rule 65 which requires "*application for maintenance or periodical payments on a decree for dissolution or nullity of marriage shall be made in a separate petition which may be filed at any time after decree nisi but not later than one calendar month after decree absolute...*" Mrs. Matura-Shepherd argues that while the Petitioner failed to make her application properly and limited herself to section 152(1), she nonetheless asked for maintenance in the body of her petition without stating under which provision that relief is sought. The court therefore needs to state under what authority it is doing so since the Applicant has failed to so do and has left the issue at large.

Ruling on Issue One

7. It appears from the arguments presented by both sides that there is no serious question as to whether maintenance should be paid to the Petitioner. The issue seems to be the very narrow one as to the form such maintenance is to take, as the Respondent seems to be querying whether based on the pleadings the Petitioner is entitled to a lump sum or to periodical payments. Since that is the case I rule on this first issue that the Petitioner is indeed entitled to maintenance from the Respondent. I will order that the Respondent make payments to the Petitioner in the form of monthly sums as maintenance and I do so pursuant to section 152(2) of the Supreme Court of Judicature Act.

Quantum of Maintenance

8. Both counsel for the Petitioner and the Respondent agree on the law that the court should consider in determining the amount of maintenance that should be ordered. The matters that the court should take into account during its investigation into the

amount of maintenance to be awarded under section 152 of the Supreme Court of Judicature Act Cap 91 are as follows:

- (i) The fortune of the wife
- (ii) The ability of the husband
- (iii) The conduct of the parties

It is also the practice that maintenance is generally awarded on the basis of one-third of the joint incomes of the parties, less the wife's income. The objective of such was not to establish a clean break between husband and wife by making appropriate financial provision for the wife, but was to supply the former wife with the necessaries, comforts, and advantages incidental to her social position. (***D Tolstoy the Law and Practice of Divorce and Matrimonial Causes***, Sixth Edition (1967) at 144).

As aptly cited by Mrs. Matura Shepherd in her submissions, the rationale as to how the one-third rule evolved was clearly articulated by Lord Denning in ***Watchel v. Watchel*** [1973] 1 ALLER 829 at 839:

"There was, we think, much good sense in taking one-third as a starting point. When a marriage breaks up, there will thenceforward be two households instead of one. The husband will have to go out to work all day and must get some woman to look after the house-either a wife, if he remarries, or a housekeeper, if he does not. He will also have to provide maintenance for his children. The wife will not usually have too much expense. She may go out to work herself, but she will not usually employ a housekeeper. She will do most of the housework herself, perhaps with some help. Or she may remarry, in which case her new husband will provide for her. In any case, when there are two households the greater expense will, in most cases, fall on the husband than the wife. As a start has to be made somewhere, it seems to us that in the past it was quite fair to start with one-third... but this so-called rule is not a rule and must never be so regarded. Any calculation the court has to have a starting point. If it is not to be one-third, should it be one-half? Or one quarter? A starting point at one-third of the

combined resources of the parties is as good and rational a starting point as any other, remembering that the essence of the legislation is to secure flexibility to meet the justice of particular cases, and not rigidity, forcing particular cases to be fitted into some so-called principle within which they do not easily lie. There may be cases where more than one-third is right. There are likely to be many others where less than one-third is the only practicable solution. But one-third as a flexible starting point is in general more likely to lead to the correct final result than a starting point of equality, or a quarter.”

The Fortune of the Wife

9. The Petitioner has stated in her affidavit dated October 6th, 2016 that she earns \$450.00 per week working as Office Manager at her sister’s law firm. Exhibits of her Social Security Contributions and her TD4 Statement of Emoluments confirm that is indeed her income. She also receives the sum of \$800.00 per month paid to her by order of this court as interim maintenance through garnishee of the Respondent’s wages. She states that given her earnings she is unable to afford to pay rent, and has to depend on her family members for a place to live. As set out in her affidavit of October 6th, 2016, the Petitioner’s monthly expenses total \$2,510.00 and do not include expenses for vehicle maintenance, repair, licensing, and insurance, clothing, medical and dental and any other incidentals. It is submitted that the Petitioner cannot, given the amount paid by the Respondent as interim maintenance, live anything other than a lifestyle which is dependent on assistance of her family members to be able to manage even a modest existence.

The Respondent argues that it must be noted that the Petitioner works and that she is now going to own the last of any matrimonial property that they both have left from the marriage as the wife has already disposed of and used up the rest of the matrimonial assets to the exclusion of the husband.

He says that although the Petitioner complains of health issues and has produced two medical reports on hypertension and pre-diabetes, he argues that these are lifestyle

illnesses that are very much within her discipline and control. She has been provided with a vehicle by him and she works and earns an income. She only has herself to care for as the children are now grown and living on their own and earning their own keep. He further contends that the wife sold the furnishings of their matrimonial home for \$21,125.00 to one Beverly Gallaty (Exhibit LV29) and that that money forms part of the fortune of the Petitioner.

The Ability of the Husband

10. The Petitioner submits that while the Respondent has submitted spreadsheets, income and banking statements, he has studiously avoided providing pay slips, TD4s or other proof of his income from SSB and any other income earned by him. She argues that from the affidavit and documentary evidence submitted by the Respondent the Court can glean that the Respondent's monthly net income is \$6,478.46 and that his annual net income including his vacation grant and gratuity is \$91, 741.52. She urges the court to consider the sum of \$1,248.38 as the starting point for an award of monthly maintenance using the one-third rule.

The Respondent contends that his ability is based solely on his income from one source, his employment. In his affidavit dated 3rd July, 2013, he claims that his net income is \$5,013.19 per month or \$60,158.28 per year. He also submits that he has agreed to hand over all matrimonial property to the Petitioner and all monies outstanding on these and monies for which she has failed to account in the disposal of matrimonial assets. In his fifth affidavit, he deposes that he will do the following:

- a) That the two lots at Mile 14 Philip Goldson Highway, near Trinidad Farm, be given to the Petitioner for her to do with as she pleases, instead of her request for it to be given to our children, and if she wishes to so give our children, that it be her choice to do so;
- b) That the remaining funds of \$10,000.00 to my knowledge still owing for the sale of the Long Caye Lot which was purchased during the subsistence of the

marriage and for which the Petitioner has not accounted for, be kept by the Petitioner for her use and benefit;

c) A gross sum of \$24,000.00 less the over-payment made for child maintenance in the sum of \$16,750.00 as a result of the garnishment of the salary of the Respondent with the remaining \$7,250.00 being paid out at \$500.00 monthly until all is paid.

d) The KIA Sportage 2009 vehicle was bought by the Respondent and given to her for her sole use and benefit.

The Respondent submits that the court must take into account the sober reality of his circumstances in that he does not have a house of his own and has to move in with his new wife, and that he also needs to provide for that wife and fulfill his matrimonial obligations and responsibilities there. He also asks that the payment of \$500.00 monthly be the quantum, taking into account his own expenses, his inability to live from paycheck to paycheck, and considering the expenses and obligations he has not only to his upkeep but also that of his new home. He also says that his salary is his only means of income and it is not a secure job as he is hired on a contract basis with only limited benefits as provided by the contract. He deposed in his Fifth Affidavit dated 14th of October, 2016 that his contract has not been renewed and he is not sure if it will be renewed and thus works at the pleasure of the Board of Directors of the Social Security Board. The Respondent contends that the Petitioner's employment with her sister's law firm is a more secure employment. He says he has given up all the matrimonial assets to his former wife and all he is left with is his bare salary and that it would be unconscionable that he should be asked to provide any money further than what he has already provided by surrendering all matrimonial property.

The Conduct of the Parties

11. The Petitioner argues that the first matter that the Court must take account of is the Respondent's adultery was the cause of the breakdown of the marriage. The

circumstances that compel the Petitioner to be obliged to make this application to the Court are not of her making.

The Petitioner also deposes in her Third Affidavit dated 10th day of July, 2013 that shortly after the breakdown of the marriage, the Respondent made promises to her and to their children that he would support them. When the Respondent first moved out of the matrimonial home he freely permitted the Petitioner to use any monies out of their joint account to pay the expenses of the family. He then stopped paying his entire salary into the joint account and started paying only \$2,500.00 in March 2010 then \$2,200.00 in July 2011. Then in January 2012 after he re-married he stopped paying any maintenance at all to the Petitioner and only paid minimal amounts for the children of the marriage of \$250.00 monthly from January to July, no maintenance for August, October and December, and one payment of \$250.00 for November 2012. For the entire year of 2012, the Respondent paid nothing at all to the Petitioner for her maintenance and only \$2,000.00 to maintain his children for the entire year. She submits that this behavior on the part of the Respondent was indicative of a deep personal animus that he had developed towards his former wife and the uncaring attitude towards the welfare of his children at a time when both were enrolled in Junior College and living with their mother at the home of their maternal aunt. It is at this time that she deposes she used the monies from the sale of the household furniture and appliances as proven by the receipts in KSV 10 and KSV11. She also recounts the refusal of the Respondent to pay the amount ordered by this Court as interim maintenance, failure to apply to stay or to vary the court's order and only forcibly complied when the amount was garnished from his salary. This indicates that the Respondent wanted to pay only such sums as he wanted to pay as monthly interim maintenance notwithstanding the order of the Court. She also submits that the Respondent has, since January of 2012, acted in a manner which demonstrably indicates that he is manifestly unwilling to pay any maintenance to the Petitioner, and that this is a matter which the Court should take into account.

Court's Decision on Quantum of Maintenance

12. The Petitioner is asking that the amount of approximately \$1,300.00 be the starting point, while the Respondent is asking that the sum of \$500.00 be the quantum. The Petitioner earns approximately \$24,000.00 as a Legal Secretary and the Respondent earns approximately \$96,000.00 as General Manager of Corporate Services at the Social Security Board. I award the Petitioner the sum of \$1,000.00 per month to be paid by the Respondent to the Petitioner as maintenance for the rest of her life, taking the respective income and expenses of both parties into account. In reaching this quantum, I have had regard to all the evidence as contained in all the affidavits filed on behalf of the Petitioner and the Respondent, as well as the written submissions filed on their behalf. While it is true that the Court's role in maintenance proceedings is not to punish the Respondent, at the same time the Court cannot close its eyes to the fact that Belize is still a fault based jurisdiction, and as Mr. Chebat, SC, has rightly submitted, it is the Respondent's conduct in committing adultery that brought the marriage to an end and has forced the Petitioner into the position of having to apply to this Court for maintenance. In performing this balancing exercise in awarding this sum for maintenance to the Petitioner, I have kept in mind that while the Respondent is also responsible for maintaining his new wife on his salary, I note that his new wife Lelani Habet is the owner of 9,999 shares in a well-established commercial enterprise in Belize known as Dave's Furniture World, as evidenced by Exhibit KV9 attached to the Fourth Affidavit of the Petitioner dated 16th day of July, 2014. I also order that the full ownership of the two lots properties located near Mile 14 Phillip Goldson Highway Trinidad Farm be transferred to the Petitioner by the Respondent.

13. **Issue Two: Whether the Petitioner should receive an equitable share of the retirement fund at Neuberger Berman Inc. which is in the name of Leo Francis Vasquez**

I accept as true the evidence of the Petitioner that the Respondent promised her on repeated occasions that she would never have to worry because the fund was there for their retirement years. However I take account of the fact that this is an individual and

not a joint fund and as rightly pointed out by Mrs. Shepherd for the Respondent, it is not assignable. The relief sought under this heading is therefore refused.

14. **Issue Three: Whether the Respondent should be ordered to reimburse the Petitioner for all Medical Expenses in the sum of \$978.00 as well as the remaining balance owed to Wachovia Bank in the sum of \$381.32USD plus finance charges along with the \$350.00 USD plus finance charges that was paid to the Bank by the Petitioner**

The Petitioner submits that the Respondent does not deny that he should pay these monies to the Petitioner and she asks that the court so orders. The Respondent argues that the Petitioner never proved those charges and that the Petitioner was found to be lying about the monies reimbursed to them from the sales agent who dealt with the sale of the house in the United States. Whatever reimbursement that needed to be made has since been ordered. I do not find the charges proven so this relief is also refused.

Issue Four: Whether the Respondent should be ordered to reimburse the sum of \$4,300.00 to Eric and Jihad Ackerson for a personal loan

15. The Petitioner submits that the Respondent does not deny the loan and merely says that he needs to confirm the nature of the loan. The Respondent says that he never signed any loan agreement and that he is not responsible for the debts of his former wife as per section 3(2) of the Married Women's Property Act:

"3(2) From and after 8th August 1953, all the rights, powers, and authorities of the husband existing at common law over and in relation to the property of a wife acquired before or after marriage shall cease to exist, and the husband shall not be liable in respect of any debt or obligation of the wife whenever incurred, and every married woman shall be entitled to sue, and be liable to be sued, in all courts of law in her own name without the intervention of her husband."

I agree with the submissions made on behalf of the Respondent. The relief sought under this heading is also denied.

Issue Five: Whether the Respondent should be ordered to pay the costs of this Petition

16. The Petitioner asks that the Respondent pay the costs of these proceedings. The issue of costs is discretionary, and I find that the Respondent's behavior in refusing to obey the order of the court in relation to payments of interim maintenance to the Petitioner to be downright disrespectful of this court and bordering on contempt. There was no application by the Respondent to vary the quantum of interim payments, and there was no compliance with said order until his salary was garnished by this court.

I therefore order that the Respondent be condemned to pay to the Petitioner the costs of these proceedings in full to be agreed or assessed.

Dated this Wednesday, 12th of July, 2017

**Michelle Arana
Supreme Court Judge**