

IN THE SUPREME COURT OF BELIZE, A. D. 2014

ACTION NO. 307 of 2014

IN THE MATTER OF THE SUPREME COURT OF JUDICATURE ACT (CHAPTER 82 OF THE LAWS OF BELIZE)

AND

IN THE MATTER OF RULE 65 OF THE MATRIMONIAL CAUSES RULES 1935

	(BARBARA HENRIETTA GONGORA	PETITIONER
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BETWEEN	(AND	
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	(ENRIQUE NOLASCO GONGORA	RESPONDENT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Ms. Magali Perdomo of Reyes, Retreage LLP for the Petitioner

Mr. Philip Zuniga, S.C., for the Respondent

D E C I S I O N

Facts

1. The Petitioner Barbara Gongora was married to the Respondent Enrique Gongora on July 6th, 1996 at St. Mary's Anglican Church in Belize City. There

are two children of the said marriage namely Enrique Gongora Jr. and Tiffany Gongora (both of whom are adults). A decree nisi was granted to the parties on February 9th, 2015 bringing their marriage of 27 years to an end. The Petitioner is a housewife/retiree and the Respondent is also a retiree. The Petitioner receives the sum of \$400 Bz per month as maintenance from the Respondent pursuant to an order of the Belize Family Court dated December 1st, 2011. The Petitioner brings this petition seeking an increase in maintenance on the basis that her monthly expenses exceed the sum she receives from the Respondent, and are not adequately met by the monthly payment she presently receives from him. She is therefore asking for the sum to be increased to \$750 per month.

The Issue

2. The sole issue for the determination of this Court is whether the amount of maintenance should be increased or whether it should remain the same.

Evidence of the Petitioner

3. The Petitioner testified that the Respondent did not provide maintenance for her until an order was made by the Belize Family Court compelling him to do so. She also claims that in addition to a gratuity of \$58,604.00 which her ex-

husband received from the Government of Belize upon retiring in 2015, he also receives a monthly sum of \$1,052.00 per month as a pension. Mrs. Gongora says that she retired from B.E.L. and she has no monthly income to sustain herself. She says that she has no prospect of gaining employment. Her expenses are approximately \$1,618.00 per month as itemized in a breakdown of bills in her witness statement. She says that she was married to the Respondent for 27 years and his departure has left her in a financially difficult position. Mrs. Gongora is asking that the court make an order increasing monthly maintenance payments from \$400 to \$750 per month.

4. Under cross-examination by Mr. Zuniga, SC, for the Respondent, Mrs. Gongora said that Mr. Gongora used to give her \$700 per month to cover household expenses. When she went to Family Court, that amount was reduced to \$400 per month. She admitted that upon her retirement from Belize Electricity Ltd., after 27 years as a Customer Service Representative, she received the sum of \$76,000. She said that she did not give Mr. Gongora any of that money, but she bought two vehicles. They travelled and did lots of things with the money. She says he never used to pay bills, but he used to give her money to pay the bills. She said she used to also get money from the US from her family to help with the upkeep of their home. Since her mother

passed away, she no longer gets any money from the US. She says that she is claiming \$247.68 as a monthly expense for clothes; that is how much she spends because Mr. Gongora had her that way. He told her when he was leaving that he wanted her to continue live the same way that he had her living. When asked about \$68.80 as the cost of the butane gas for cooking, Mrs. Gongora said that the gas lasts for two months and she used it to cook for her family and for herself. The witness said that she needed \$200 per month to cover the cost of entertainment. She says that Mr. Gongora taught her that and that she would take her kids out every month and that is what it would cost. The youngest child is now 26 years old. She resides in her family home.

5. The Petitioner also called one witness on her behalf, Tiffany Gongora, daughter of the Petitioner and the Respondent. Ms. Gongora testified as to the nature of the relationship between her parents. She testified that her mother was a dedicated wife to the Respondent and a devoted mother to her. Her mother took care of all the family's needs through cooking, cleaning, laundry etc. She says she does not understand how her father could claim that he was neglected and abused by her mother. She says she used to be close to her father. Her mother put up with his drinking. She noticed her

father's behavior started to change in that he became emotionally distant and then physically started to stay away from their home. She later learnt that her father had left her mother for another man's wife.

6. Under cross-examination by Mr. Zuniga, SC, Ms. Gongora said that her mother provided a clean home for her father and for everybody. She said that she disagrees with what her father has said about her mother in his witness statement. She was a witness to her parents' marriage and the purpose of her statement is to help her mother get due compensation for the marriage.

Evidence of the Respondent

7. Mr. Gongora testified that he was married to the Petitioner for 27 years, during which time he was made to feel unwelcome and unwanted at her family home. During the marriage, the Petitioner never told him how much she was earning, but it was common knowledge that she was earning more money than him; she never gave him any money. Whenever she asked him for any money, he would just give it to her. He also does not know how much money she got when she retired because she refused to tell him anything about it. After being rejected and abused for years, he left the matrimonial

home on the 12th October, 2011 because he got tired of the Petitioner telling him to leave the house. Mrs. Gongora then started to harass him by telephone calls and texts, so he applied for a Protection Order against her at the Belize Family Court, which he received on December 8th, 2011. When the parties received an order of Legal Separation on December 1st, 2011, he was ordered to pay \$400 monthly as maintenance to Mrs. Gongora. Prior to the order, he had been paying the Petitioner \$700 per month. He was therefore surprised when she took him to Family Court for maintenance. He is up to date with his maintenance order payments. He sets out his monthly expenses for light, water, telephone, bank loans, etc., as amounting to \$3,223.37. Mr. Gongora says that he is now retired from the Post Office since April 10th, 2015. He asks that the Petitioner's prayer for maintenance be dismissed and that she be ordered to pay the costs of these proceedings.

8. Under cross-examination by Ms. Perdomo, Mr. Gongora agreed that when he met the Respondent he was not working. He moved into her family home. He said that she did not cook while she was working because they had a maid named Ms. Dixie who would cook and wash; she cooked after she retired. He agreed that as a married couple in the early years, they were happy together, socializing, going shopping, attending church. He disagreed that his

allegation of feeling rejected and abused in the marriage was incorrect; he said they were a happy couple in the early years. He agreed that he used to give his wife \$700 as monthly maintenance. He says he now gets \$1,300 per month as a pension. He agreed that he collected \$55,000 but he has spent it. He disagrees that he was the one who ended the marriage. He also disagreed that he ought to take care of his wife.

Legal Submissions on behalf of the Petitioner

9. Ms. Perdomo submits on behalf of Mrs. Gongora that the Petitioner has monthly needs in the amount of \$1,527.16 which are not being met by the minimum monthly sum that the Respondent has been ordered to pay. The Respondent left the matrimonial home in 2011 to live with another woman and adultery was therefore the basis on which the Belize Family Court granted the order in 2012. The Respondent receives a pension of \$1,052 per month. He has also received a gratuity of \$58,604.00 in 2015. Mrs. Gongora says that she is presently retired and has no prospect of gaining employment at her age. She is asking that Mr. Gongora be ordered to pay her \$750 per month or such lump sum as the court shall deem fit.

Ms. Perdomo cites section 152 of the Supreme Court of Judicature Act which provides that:

“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 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.”

Ms. Perdomo submits that Mrs. Gongora has no source of income since she retired. This is not in dispute. In regard to Mrs. Gongora’s ability to sustain herself, Mr. Gongora has a gratuity and pension that would allow him to provide additional maintenance to Mrs. Gongora. Ms. Perdomo further submits that the Supreme Court of Judicature Act calls for the conduct of the parties to be taken into account in determining maintenance. She argues that the Legal Separation Order of the Belize Family Court established that

Mr. Gongora committed adultery. Ms. Tiffany Gongora, daughter of the parties, testified in this hearing that it was her father's abandonment of the home and his adultery which contributed to and eventually caused the breakdown of the marriage. On this basis, the Petitioner asks that the relief sought be granted.

Legal Submissions on behalf of the Respondent

10. Mr. Zuniga, S.C., on behalf of Mr. Gongora contends that the parties had been living separate and apart for six years before Mr. Gongora petitioned the court for a divorce. Mrs. Gongora did not contest that petition and the divorce was granted on April 7th, 2015 *"by reason that the said marriage had broken down irretrievably and that the parties have lived apart for a continuous period of at least three years immediately preceding the presentation of the Petition"*.

He submits that Mrs. Gongora is not a witness of truth. In her affidavit she said that Mr. Gongora was not paying her any maintenance until he was ordered to do so. However, under cross-examination, it became clear that he was previously paying her \$700 per month but because she wanted more money, she applied to the Family Court for maintenance. The Family Court

then ordered that Mr. Gongora pay her \$400 per month which he continues to pay to date.

11. Mr. Zuniga, S.C., says that Mrs. Gongora has admitted that she stopped working because she does not see it fit to work, not because she is ill or unable to work. Ms. Tiffany Gongora says that she believes that her mother should be compensated for her efforts and for everything else all of them had to endure (from her father); she believes her mother is entitled to "*due compensation for the marriage*". Mr. Zuniga, S.C., submits that the Petition should be denied for the following reasons:

- i) There are two children of the marriage, namely, Enrique David Gongora Jr. born on October 25th, 1986 and Tiffany Shenique Gongora born on September 22nd, 1990. Both are now adults and are working, so there is no question of caring for them.
- ii) Mrs. Gongora continues to receive money at \$400 per month paid by Mr. Gongora to the Family Court.
- iii) Mrs. Gongora has a family house in which she resides. She is better off than Mr. Gongora who does not have that luxury. He has no house.

- iv) Mrs. Gongora testified that she gets money from relatives in the U.S.A. until recently when her mother passed away. Mr. Gongora has no such resources.
- v) Mr. Gongora has testified that he had to leave the house because of the way that Mrs. Gongora treated him. Even though they had previously lived as a happy couple in the early years of their marriage, the relationship deteriorated to the point where he felt that he had to go.

Mr. Zuniga, S.C., submits that under Section 52 the Court has a discretion to refuse to grant this application as the section states the Court may *“if it thinks fit”* order the husband to pay maintenance. He further points out that when Mrs. Gongora retired from B.E. L. she did not share her retirement money with Mr. Gongora. She received approximately \$76,000 which she admitted that she spent on vehicles. Under cross-examination she said: *“I didn’t physically give him in his hands but I bought two vehicles and we travelled and we did a lot of things with the money.”*

12. In regard to the ability of the husband, Mr. Gongora testified that he retired from his position as Senior Postman at the Post Office with effect from April

10th, 2015. This was more than three years after he had left the matrimonial home on October 12th, 2011. While he was employed, he earned \$1,300 and he did receive \$56,000 upon his retirement. He testified that he has spent all his retirement money and offered to show the court his bank account. Mr. Zuniga, S.C., submits that Mr. Gongora does not have the ability to pay maintenance to Mrs. Gongora. He is unemployed and broke.

13. In relation to the conduct of the parties, Mr. Zuniga, S.C., contends that Mr. Gongora explained that he left the matrimonial home because he had gotten tired of Mrs. Gongora telling him to leave her home. After he left, she continued to harass him with telephone calls and texts to the point where he was forced to seek and obtain a Protection Order (Exhibit "ENG-1" dated 8th of December, 2011) against her which stated that Mrs. Gongora was not to in any way be on the premises at 132 Vernon Street where he was residing, and not in any way or at any time engage in direct or indirect communication with him.

14. Mr. Zuniga, S.C., submits that since Mrs. Gongora was not able to continue to harass Mr. Gongora because of the Protection Order that was in place against her, she proceeded to take him to Family Court even though he was

paying her \$700 per month in maintenance at that time. She was then granted a Legal Separation Order and maintenance in the sum of \$400 per month with effect from December 3rd, 2011.

Decision

15. Having considered the evidence and the submissions on behalf of both parties, I am satisfied that this application for increase of maintenance should be denied. I agree with the submissions of Mr. Zuniga, S.C., in their entirety. The parties are both retirees. Mrs. Gongora lives in her own house. She appears to be able bodied and healthy and capable of work, and by her own admission she simply does not see it fit to work; I have no evidence before me that she is unhealthy or incapacitated in any way. She is reasonably well educated and has a wealth of experience as a Customer Service Representative having worked there for 27 years. The divorce was granted on the grounds of irretrievable breakdown of the marriage and the parties living separate and apart for at least three years. Mrs. Gongora had the opportunity to contest the grounds on which the divorce was granted; she chose not to do so. The marriage has come to an end. I have no evidence before me that Mr. Gongora is in any position to pay Mrs. Gongora more

than the \$400 per month that he is already paying at the Belize Family Court.

The application for increase in maintenance is therefore denied.

Each party to bear own costs.

Dated this Friday, 5th October, 2018

**Michelle Arana
Supreme Court Judge**