

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

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SUIT NO. F.D. 234/2003

BETWEEN DELROY COX PETITIONER/RESPONDENT
AND LEONIE ELAINE COX RESPONDENT/APPLICANT

Ms. Gillian Mullings instructed by Patrick Bailey, Company for Applicant/Respondent

Ms. Deidre Powell for Petitioner/Respondent

Heard on 29th June, 9th July & 23rd July 2004

STRAW J. (Ag.)

The Applicant Mrs. Cox has applied to the Court for financial support for herself and for the four (4) children produced by her union with Mr. Cox. The parties were married in 1987 and finally separated in 2000. The four (4) children are Natoya Cox, born on the 26th July 1989 (15 years); Avy Ann Cox, born on the 1st November 1990 (13 years); Ramanda Cox, born on 22nd December 1993 (10 years) and Tivanea Cox, born on the 31st October 1995 (8 years).

She is requesting a monthly sum of at least \$60,000.00 and in addition that all the medical, dental, optical fees, school fees and school expenses be paid by Mr. Cox.

On the other hand, it was submitted on behalf of Mr. Cox that the Court make a weekly award of \$3,500.00 for the maintenance of the children and that no award be made on behalf of the Applicant, Mrs. Cox.

An interim order of \$5,000.00 per week was made against Mr. Cox on behalf of Mrs. Cox and the children.

Expenses and Means of both Mr. & Mrs. Cox

At present, Mrs. Cox is a registered nurse and earns a net salary of \$23,430.00 per month. She works in Montego Bay, St. James. The children reside in Chudleigh - Christiana, Manchester. Both parties cohabited at a rented house in Chudleigh between 1999 and 2000. Previously, they had cohabited at Roseheights, St. James. The Applicant is alleging that this home at Roseheights was purchased by both parties. Mr. Cox states that it is a two-bedroom house that he built on a piece of 'captured' land without any help from the applicant.

Mrs. Cox has estimated her monthly expenses for herself and the children to be \$123,325.00. This includes rent for \$15,000.00, food for \$16,400.00, school expenses and lunch for \$17,000.00, travelling for \$15,000.00, school fees of \$6,500.00 and telephone bill for \$20,000.00.

Mr. Cox on the other hand has said that he earns an amount not exceeding \$6,000.00 per week. This is earned from the pick up that he operates. He transport goods around the town in Montego Bay and earns between \$300 to \$500.00 per trip. He estimates his living expenses to be \$15,000.00 per month for food, utilities and gas. On average then, he would be earning \$24,000.00 per month. This is the same as Mrs. Cox. His expenses plus interim maintenance payment would mean that he needs \$35,000.00 per month for basic necessities and obligations. Mr. Cox has also given the use of a Toyota Motor Car to the

Applicant to use to operate as a taxi to cover the expenses for the maintenance of the children.

Analysis of the Parties Means and Expenses

In relation to Mrs. Cox, the court is of the view that the \$20,000.00 per month for the use of cellular phones for all the children is exorbitant in light of all the circumstances. The traveling expenses at \$15,000.00 per month are unclear. Does this represent her traveling between Montego Bay, Trelawny and Christiana and/or traveling expenses for the children? I bear in mind also that she has been given the use of the Toyota Motor Car.

In relation to Mr. Cox, Mrs. Cox has said that he uses his Toyota truck to make deliveries and during their marriage he earned in excess of \$150,000.00 per month. She exhibited in support of this their joint bank book with the former Workers Bank. She was the one who deposited the money earned by Mr. Cox. An examination of the bank book reflects substantial deposits between 1995 to 1997. These gradually petered out by July 1997.

Mr. Cox states he does not know how these large amounts of money came to be deposited to the account. He is either lying or does not recall the amount of money he has earned during that period. However, Mrs. Cox stated that when both parties reconciled in 1999, they were living at the rented house in Chudleigh. Mr. Cox was not working then as he had sold the truck and van.

In 1999, the Toyota motor car was purchased. Mr. Cox operated this as a taxi. According to her, he would earn about \$17,000.00 per week especially when he got charters.

Mr. Cox no longer operates this car as it was given to Mrs. Cox. She states that she got it in a state of disrepair and had to spend \$200,000.00 to repair it. No documents were brought in support of this contention. She admitted that one Mr. Melbourne who is 'her best friend from school' at some time had used the car for a taxi.

This is the same Mr. Melbourne that in her affidavit she had denied knowing but admitted it under cross-examination. She has, however, denied that she is living with him in Trelawny.

When the Court asked Mr. Cox to explain the shift in his earning between 1995 to the present, he indicated that it was the emotional distress he was under because of Mrs. Cox 's adultery. The Court notes also that he had to leave the matrimonial home in Chudleigh in 2000 as a result of an assault on Mrs. Cox.

He also explained to the Court that he no longer operated the truck. This is supported by Mrs. Cox.

Having assessed Mr. Cox as a witness, it is clear that at present, he is not earning as much as he did between 1995 and 2000. However, the Court is not satisfied that he is being totally honest as to his actual earnings.

The figures of \$500 and \$300 per week seems to be more in the line of taxi fare and not that of the rental of a pick up hired for the purpose of hauling load.

I therefore assess his net income per week as being in the region of \$12,000.00 i.e about \$3000.00 per day for four (4) days which result in a monthly figure of \$48,000.00. Mr. Cox has the potential to earn more but the Court is not

of the view that he is financially able at this time to support Mrs. Cox with a weekly or monthly figure. The affidavit of Mrs. Elsie Allen about Mr. Cox's involvement in a joint savings program which entitled him to receive about \$120,000.00 every six (6) weeks relates to a period of 5 years.

There is no evidence that he is involved in any such program at this time. In fact, Mr. Cox had indicated that he used the proceeds from the savings to purchase the Toyota motor car. In considering all the circumstances, I note the following:

- 1) Mr. Cox lives rent free in his own home
- 2) Mrs. Cox is paying rent to accommodate herself and four children
- 3) Mrs. Cox has the use of the Toyota Motor Car which is a potential money earning asset. This has to be taken into account (**per Attwood vs Attwood, 1968 3 ALL ER, pg. 385**)

I have assessed Mr. Cox to be earning more than Mrs. Cox on a monthly basis. There are four (4) children. They share living expenses with the Applicant, so any award made for the benefit of the children will have an impact on the monthly expenses of Mrs. Cox.

I am of the view that an amount of \$6,000.00 per week (\$24,000.00 monthly) for the children's maintenance plus medical expenses and half school fees would be fair and just in the present circumstances. In making this order, I consider that Mr. Cox's expenses on a monthly basis would be in the region of \$39,000.00 (excluding medical expenses and half school fees) out of a possible

\$48,000.00. Mrs. Cox would have, in addition to her monthly salary of \$23,430.00, an additional \$24,000.00. This would bring her total monthly income to \$47,430.00, which is roughly the amount that I have estimated Mr. Cox to be earning. The car as I have said, is a potential source of income and ought to be utilized as such to supplement her income.

In view of my assessment of Mr. Cox and his limited means, I cannot ask that he carry a greater burden than this at the present time. I will, therefore, not be making an order for the maintenance of the Applicant. An application for variation could be made as the circumstances of both or either change.

In relation to the school fees for Natoya Cox, which is \$19,000.00 per term, I am of the view that both parties should discuss the issue and make a decision in the best interests of all concerned, taking into consideration the question of affordability.

Liberty to apply.