

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN FAMILY DIVISION
CLAIM NO. 2005 F.D. 2343

IN CHAMBERS

BETWEEN GLORIA MAGDALINE MARAGH PETITIONER

AND ERIC MARAGH RESPONDENT

Mr. Gordon Steer and Ms. Deborah Dowding instructed by Chambers,
Bunny and Steer for the Petitioner

Ms. Linda Wright for the Defendant

**Maintenance of wife – Application for – Wife prevented from engaging in
continuous employment during the marriage – Whether a consideration for
maintenance award – Whether previous receipt of a lump sum from a division of
matrimonial property should affect award – Sections 5 (2) and 14 (4) of the
Maintenance Act 2005**

27th January and 9th February 2009

BROOKS, J.

Mr. Eric Maragh and Mrs. Gloria Maragh have divorced after
approximately thirty-nine years of marriage. They are both now over 62
years old and retired.

After their separation, Mrs. Maragh sold her half interest in the former
matrimonial home to Mr. Maragh. Within a year of the sale, and before the
divorce, for which she petitioned, was made absolute, Mrs. Maragh filed the
present application for Mr. Maragh to pay her monthly maintenance. Mrs.
Maragh's major reasons for requiring support are that, she is ill and does not

have sufficient income to meet her needs. She says that she has had to use the monies she received in October 2007 from the said sale, to maintain herself, pay off debts which she owed and to purchase a car for transportation. In asserting that Mr. Maragh has the ability to pay maintenance, Mrs. Maragh points, among other things, to the fact that he lives in his own house, while she has to occupy rented premises.

Mr. Maragh says that his pension is his main source of income because his assets, including real estate and shares, do not produce much income. He asserts that he is unable to meet any other expenses out of his pension and so the court should refuse Mrs. Maragh's application.

The questions for the determination of the court are firstly, whether Mrs. Maragh should be awarded maintenance and if so, in what amount.

Should Mrs. Maragh be awarded maintenance?

Basis for the application

The application has been made pursuant to the provisions of Section 23 of the Matrimonial Causes Act. This section was amended by the Maintenance Act 2005 to allow for maintenance orders to be made for the benefit of spouses. The Maintenance Act, in Sections 5 (2), and 14 (4), provides guidance to the court as to the factors to be considered in deciding if, how much and for how long, maintenance payments should be paid by

one spouse to another. I shall examine the relevant requirements of the provisions of each subsection.

The duration of the marriage

As already pointed out, this was not a brief union. The parties had made a life together and had had children who are now adults.

Mrs. Maragh's contribution to the relationship and the economic consequences of the marriage for her, particularly for her earning capacity.

During the marriage, Mrs. Maragh never had any extended employment. Mr. Maragh testified that, during his working career, his employer, a bank, transferred him to work in various parts of the island. It was expected, in that event, that his spouse would give up any employment which she had and relocate to live where he had been transferred.

He said that Mrs. Maragh did adapt to this regime at first. As a result, however, she had no regular employment and when she did work it would be at temporary jobs which he would secure for her. There is no evidence as to when she ceased operating according to those strictures but it is clear that she did not get to the stage where she became self sufficient. He testified:

"I supported my wife for the duration of our marriage...I would say that she always worked temporarily or on contract throughout the marriage."

It is my view, that in considering this application, this should be a significant factor in Mrs. Maragh's favour.

Mrs. Maragh's needs, having regard to the accustomed standard of living during the marriage.

In her divorce petition, filed before their respective retirements, Mrs. Maragh stated that she was a secretary and described Mr. Maragh as a bank manager. The house in which they lived is at 7 Charlton Mews Kingston 8 which is in a fairly desirable location. Mr. Maragh testified that he would, at stages of the marriage, provide Mrs. Maragh with a motor vehicle.

Mrs. Maragh, in May of 2008, put her monthly expenses at \$133,700.00. Her expenditure included things such as motor vehicle upkeep, cable bill, clothing and personal upkeep. She testified that she does get occasional assistance from their two children but that the children have families of their own and cannot give "any meaningful support". It cannot be said, with the background of her previous place of residence and the fact that Mr. Maragh would provide her with a car, that the total expenses are exorbitant; having regard to the fact that rent is \$35,000.00 of that figure.

The housekeeping, child care or other domestic service provided by Mrs. Maragh for the family

This heading is introduced by virtue of section 5 (2) (f). It is designed to guide the court to enquire whether the spouse seeking maintenance, performed services for the family which could be treated as if it were remunerative employment. Not much was made of this aspect by Mrs.

Maragh. Nor was much said about her child-care responsibilities or how they affected, if at all, her earnings and career development.

The terms of the order made under the Property (Rights of Spouses) Act in relation to the property of the parties

This aspect is dealt with in section 5 (2) (h). Mrs. Maragh sold her share of their home and some jointly held shares for over \$7,600,000.00. The order concerning the division of the property was made pursuant to the Married Women's Property Act. That fact does not prevent the consideration of the order. It is the availability of funds and assets, to one or other of the former spouses, which is the intention of section 5 (2) (h).

The eligibility of the spouses for a pension, allowance or benefit under any superannuation fund or scheme

Mrs. Maragh testified that she does not have a pension other than that provided by the National Insurance Scheme (NIS). That is not surprising bearing in mind her employment history. The monthly figure that she receives from the NIS can be only described as derisory.

Mr. Maragh receives a monthly pension of \$137,342.48.

The assets and means of the respective parties

The issue of the assets and means of the respective parties is the first of the issues mentioned in section 14 (4) of the Maintenance Act. Mrs. Maragh says that she has no income earning assets.

Mrs Maragh says that she has exhausted the money that she got from the sale of the house and the shares. I do not believe her. In cross examination, after accounting for at most, \$2,000,000.00, she could only say that she had spent the rest on her maintenance. In cross-examination she said, "I spent the money on myself on day to day living". It must be borne in mind that for some months after receiving the lump sum, Mrs. Maragh was also receiving monthly maintenance payments from Mr. Maragh.

Mr. Maragh says that his real estate holdings are his home, a parcel of bare land and an apartment. These are all jointly owned with his children. He also owns shares in listed companies. He says that only the shares earn an income and then only a small amount. On his evidence, he owes a debt of \$2,500,000.00 to his brother as a result of his purchasing Mrs. Maragh's interest in the former matrimonial home. He had intended to sell some of his shareholding to liquidate the debt. That will reduce his asset base.

On the evidence, neither party is likely to be accumulating any further assets of any significance, considering that they are both retired.

Mrs. Maragh's capacity to contribute to her own support

In my view, Mrs. Maragh does have another source of income apart from her pension. That source is most likely the monies she secured from the sale to Mr. Maragh, of her interest in the shares and the home. She has

not been frank with the court concerning that money and so I am unable to determine how much it can reasonably contribute to meeting her expenses.

The capacity of Mr. Maragh to provide support

In his affidavit Mr. Maragh deposed that his monthly expenses totalled \$146,937.23. This exceeds his, claimed, monthly pension earnings by over \$9,500.00. He said that he addressed the shortfall by cutting down some expenses at times. I do not accept that Mr. Maragh does not have any other source of income. He spoke of having a foreign exchange account which would have varying amounts from time to time. The implication was that he makes deposits as well as withdrawals. Bearing in mind what he says about his monthly expenses, the funds for the lodgements must come from a source other than his pension. I however have no indication of what is that source or how much it contributes to his monthly income.

There is evidence however, that Mr. Maragh can earn other income. I have noted that, for some time while he was a pensioner, Mr. Maragh did pay Mrs. Maragh monthly maintenance in the sum of \$35,000.00. I am also of the view that Mr. Maragh is able to source additional funds by making productive use of his real estate holdings. He cannot elect to have them in an unproductive state and then hold up his hands and say he earns nothing from them. I specifically exclude from this observation, the former

matrimonial home and the shares which he bought from her. Mrs. Maragh, having collected the money representing her half interest in those items, cannot properly say that he should use his interest therein, to maintain her.

Mr. Maragh cannot afford to have his daughter occupy the apartment rent-free, albeit that she is a part-owner thereof. Nor can he afford to have the vacant lot in Cherry Gardens sitting idle. Not while Mrs. Maragh is at risk of suffering deprivation. He needs to make them productive.

The respective ages and health of the parties and their capacity to secure appropriate gainful employment

This consideration is raised by section 14 (4) (e) of the Maintenance Act. On this issue Mr. Maragh is more fortunate than his former wife. She has submitted a medical report indicating some long standing illnesses while he is, fortunately, relatively healthy.

He also has more options for income-earning than her. He states that he would be able to provide consultancy services although the approaches that he has had since he retired, proposed that he work for free. He however has not aggressively sought gainful income-earning opportunities.

Other factors raised in section 14 (4)

A number of other factors are raised in section 14 (4) for consideration. In my view they are not appropriate for detailed consideration in the circumstances of this case. Mr. Steer, on behalf of Mrs.

Maragh, submitted that the provisions of section 10 (2) of the Maintenance Act were pertinent but that section deals with the maintenance of a parent or grandparent, it is therefore not relevant to the instant case. In any event, the points which arise in section 10 (2) are addressed by section 14 (4) (c) and (e). These have been considered above.

The amount of the maintenance

Mrs. Maragh has claimed monthly maintenance of \$100,000.00. She has asserted that she has expenses of approximately \$133,700.00, but has not been candid about her income. If one assumes that she has \$5,000,000.00 invested, the monthly income therefrom is unlikely to meet her expenses.

In light of the fact that he was able to pay Mrs. Maragh \$35,000.00 as maintenance, even after having purchased her interest in their former home, I am of the view that Mr. Maragh can pay that level of maintenance.

Conclusion

A consideration of the relevant provisions of sections 5 (2) and 14 (4) of the Maintenance Act 2005 in the context of this case reveals that the probabilities are that Mrs. Maragh is in need of funds to supplement her income to meet her living expenses. The consideration also reveals that it would be reasonable to have Mr. Maragh assist her by way of maintenance. The main reason for this is that Mrs. Maragh made sacrifices during the

marriage from which he benefited. Her sacrifices during the marriage were at the expense of her own career. This has resulted in her being without any substantial pension income.

In addition to the above, Mr. Maragh maintained Mrs. Maragh during the marriage. Now that they are both retired she should not be left to suffer the risk of living significantly below that standard. Bearing in mind their respective incomes and expenses, I am of the view that Mr. Maragh would be able to provide maintenance to her in the sum of \$35,000.00 per month.

Mrs. Maragh is not entitled to point to the fact that Mr. Maragh lives in his own home. She has already secured a benefit from that asset, having been paid for her interest in it. I have excluded it from the consideration of Mr. Maragh's ability to contribute to her maintenance.

It is hereby ordered as follows:

1. Mr. Eric Maragh shall pay to Mrs. Gloria Magdaline Maragh the sum of \$35,000.00 per month for the duration of their joint lives;
2. The payments shall commence on the 1st day of April, 2009 and thereafter on the first day of each succeeding month;
3. No order as to costs.