

#98

MAINTENANCE OF SPOUSES AND CHILDREN

"Maintenance" can be defined as the provision for subsistence and necessities of life, and, in relation to children, includes educational expenses.

The legislation relating to maintenance are:-

1. The Maintenance Act
2. The Matrimonial Causes Act
3. The Affiliation Act
4. The Poor Relief Act

As requested, this paper presents certain sets of factual circumstances for practical discussion, which hopefully will require the consideration of the relevant provisions, and whether relief can be obtained in the circumstances outlined under all or any of the above Legislation.

I

Fun Loving Macho is married to Serious Sue. He refuses to provide any funds for the running of the home or for the welfare of their 2 minor children "Jack and Jill" and also for Serious Sue's daughter "Surprise" born of another before their marriage, also a minor. He states that Serious Sue is such a wealthy successful businesswoman that she can well afford to meet all the expenses.

- (a) Serious Sue applies for Maintenance of
 - (1) Herself
 - (2) Jack, Jill and Surprise.
- (b) Mr. Macho discovered that Serious Sue is having a steamy affair with Determined Sam.
- (c) Jack is later spotted by a T.V. Talent Scout and is chosen to play the lead in a T.V. weekly Series. He earns \$50,000 00 net weekly.
- (d) Mr. Macho dies leaving no estate, as he had just

(e) The Senior Machos apply to the Inspector of the Poor of their parish, for relief after failing to get any response from Serious Sue and Jack to their pleas for assistance.

II

Gaiety when 18 years old married Shamus, a top salesman of 49 years. She is now 27 years old. They have 5 children. Shamus extravagantly provides for his wife and children. Gaiety who has no skills spends her time shopping with friends, in beauty salon's and at her gym and on the beach. The chauffeur drives the children to and from school and Nanny cares for them. Shamus suffers a stroke and is paralysed. Gaiety discovers after payment of medical bills, that there is only enough money to maintain them for one month.

(a) Gaiety tries to get a job but is unsuccessful. She wants to get maintenance for Shamus, herself and the children.

III

(a) Merry Jane and Brauny Joe were married in 1980. There are 3 relevant children. Merry Jane and Brammy Joe pooled their resources and started a retail business, which they both operated and they agreed neither would take a salary. It was very successful. After the first year, from the proceeds, they purchased the business premises and a house in Beverley Hills, where the family went to live in style. Merry Jane drew no salary from the business though Brauny Joe did

the matrimonial home. Merry Jane is desperate and wants to dissolve her marriage and to quickly secure the home and her financial position and that of their children.

(b) Peggy Sue has secured her decree Nisi and on her application Orders were made granting her a lump sum and monthly sums for maintenance of herself and the relevant children of her marriage. The decree has not yet been made absolute and she is demanding her lump sum and the monthly payments.

(b)(2) There is a Maintenance order against Tallman for the 2 relevant children of his marriage. Both resided with their mother until she was sent abroad by her firm. She sent the children to Tallman before her departure. On her return 3 years later, she wants them back but Tallman refuses, despite the fact that she was granted custody, claiming that she had abandoned her right to custody and that she merely wanted them to get money from him. They both wish to take action.

(c) Sleepy Sue has been separated from her husband for 3 years. She is served with his Petition for Dissolution. There are 3 relevant children. Her husband during the period of separation periodically gave her monies. There are some misstatements of facts in the Petition and in the Statement of Arrangements, her husband, untruthfully states that he pays her regular sums each month for maintenance. She is concerned about herself and the children and wants to know whether anything can be done for them.

(d) Indifferent Jane has obtained a decree absolute but her application for maintenance for the one relevant child, was never filed and 3 months after the Decree Absolute, she asks her Attorney when her

each month and the whole of their 2 months summer holidays.

- (1) Ex-husband has failed to pay 3 months Maintenance.
- (2) Model Woman wants an Attachment Order made to secure future payments.
- (3) Ex-husband wants credit for the 2 months the children spent with him.

IV

Macho against whom there exists a maintenance order, has never paid any of the payments ordered and has decided to change his residence with the hope of breaking all contacts with his erstwhile family. His ex wife comes in for advice and action.

V

(a) Dolly an unmarried woman alleges that Lloyd is the father of her child and she wants him to maintain the child and pay her confinement costs of \$10,000.00. The child is now 4 months old. Lloyd denies he is the father. Dolly makes a complaint in the Family Court against Lloyd and claims maintenance. At the hearing both parties are represented. Dolly gives evidence of contact and of the sums claimed by her and is cross-examined. The Defendant gives evidence, denies paternity, admits some of the contact and fixes the first at a time when she could already have been pregnant. The R.M. dismissed the complaint on the ground that there was no corroboration. Dolly feels very and being hard up and struggling, she returns to her

Lloyd's Attorney in his address takes the points that the matter had been finally concluded by the dismissal of her previous complaint and that the supporting witness was available at the time of that hearing. The R.M. dismissed the complaint on the ground that the previous one had been dismissed on the merits, so no further complaint can be brought by Dolly.

Dolly wishes to appeal - advise on the various issues of such an appeal and the chances of success thereof.

(b) Mary Jane, unmarried is the mother of 3 children, fathered by 3 "Friends". She had obtained orders of paternity and maintenance against each but not one can be found within the jurisdiction. She wants to know what her legal position is.

(c) One of the above fathers returns to her neighbourhood and tells her no Court or Judge can force him to pay over his money to any woman.

NOTICE OF AN APPLICATION
FOR ANCILLARY RELIEF

F O R M 21
OF MATRIMONIAL CAUSES ACT
RULES & FORMS .

AFFIDAVIT IN SUPPORT OF SUMMONS UPON
APPLICATION TO MAKE PROVISION FOR THE
WIFE (AND/OR) CHILDREN OF THE MARRIAGE

Suit No. F M017 of 199

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
FAMILY DIVISION

IN THE MATTER of a Petition by
MODEL WIFE MOTHER MACHO Petitioner
for a decree of dissolution of
marriage.

A N D

IN THE MATTER of Maintenance of Wife
Petitioner

A N D

IN THE MATTER of Maintenance of the
children of the marriage.

BETWEEN MODEL WIFE MOTHER MACHO PETITIONER/APPLICANT
A N D FUN LOVING MACHO RESPONDENT

I, _____ being duly sworn make oath and
say as follows:-

1. That I reside at _____ and I am the
Petitioner/Applicant herein.

2. That _____ were married on the _____ and
have been living separate and apart from _____ January 1989 and by
my Petition dated the _____ day of _____ 199____, I have
applied for a dissolution of our marriage, with a claim for
Maintenance therein.

3. That the relevant children of the marriage are:-

(1) Jack Macho born on _____

(2) Jill Macho born on _____

4. That the children live with me at _____, a
(short description of accommodation and whether rented or

7. That presently our expenses are as follows:-

(List items of expenses and sums claimed)

8. The Respondent is a businessman, with a successful Auto Spare parts business at _____, operating under

the style and title "Macho's Auto Parts".

9. That I do not know exactly how much the Respondent realises from his business weekly, but I do know that up to the time of our separation, he spent upwards of \$40,000.00 per week on his lady friends and there is now produced and shown to me copies of cheques drawn by him and made out to his said lady friends from October 198 to December 199

10. That I make this Affidavit in support of my Application herein for maintenance for myself and for our said children.

Sworn to at _____)

this _____ day of _____ 199)

Before me:- _____)

.....
Justice of the Peace
for the parish of:-

.....
MOTHER WIFE MODEL MACHO